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The Right to Education of Girl Children in India: A Constitutional and Human Rights Perspective

SRINIVASH GANDHI S G[*] AND DR. SAJI SIVAN S[**]

ABSTRACT

Article 21A of the Constitution guarantees free and compulsory education to children aged six to fourteen. The Right of Children to Free and Compulsory Education Act 2009 gives statutory effect to that guarantee. For girls, however, formal admission is only one part of the right. Attendance and completion may still be undermined by inadequate sanitation, unsafe travel, early marriage, unpaid care work, and household decisions that give boys' education priority. This paper asks whether India's constitutional and statutory framework makes girls' education an effective and enforceable entitlement, or whether important aspects remain dependent on policy choices and uneven implementation. The paper examines the constitutional framework, the development of judicial doctrine from Mohini Jain v. State of Karnataka *to* Dr Jaya Thakur v. Government of India *(2026), India's obligations under the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the International Covenant on Economic, Social and Cultural Rights (ICESCR), and official education statistics. It argues that the legal framework increasingly supports substantive equality, but three weaknesses persist: Article 21A's age limit, the gap between judicial directions and conditions in schools, and the absence of a clear statutory duty to prevent and respond to girls' dropout. It proposes an "enabling conditions" approach that links the right to education with the practical conditions required for girls to enter, attend, remain in, and complete school.*

Keywords: *right to education, girl child, Article 21A, substantive equality, Right to Education Act 2009, CEDAW, child marriage, menstrual health, India*

I. INTRODUCTION

A. Background

Few propositions in Indian public life attract as much agreement as the one that girls should be educated. Every government since independence has endorsed it, every national education policy has repeated it, and the headline numbers now appear to support it. In 2024-25 the gross

[*] Author is a Student at VIT School of Law, Chennai, Tamil Nadu, India.
[**] Author is an Associate Professor at VIT School of Law, Chennai, Tamil Nadu, India.

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enrolment ratio for girls at the secondary level stood at 80.2, and their secondary dropout rate had fallen to 9.6 per cent.[1] Against that backdrop it is tempting to conclude that the legal problem has been solved.

The central question is whether the legal framework protects girls' continued participation in education as effectively as it protects initial access. The Parts that follow examine the constitutional text and the Right to Education Act, the courts' interpretation of those provisions, India's international obligations, the available statistical evidence, and the institutional and social barriers that continue to affect retention.

This paper argues that Indian law protects entry into elementary school more clearly than it protects continuation through secondary education. This imbalance may help explain why improved enrolment does not, by itself, eliminate gendered patterns of dropout.

Indian law guarantees education to children in general terms and equality to women in general terms, but the intersection of the two, the girl child who is both a minor and a member of a historically disadvantaged sex, is addressed mainly by implication. The Constitution contains no clause expressly guaranteeing the education of girls. The Right to Education Act 2009 mentions gender only occasionally. Much of the work of connecting a girl's circumstances to the right has been done by courts, and more recently by a single decisive judgment on menstrual health and school infrastructure. The problem this paper addresses is whether that patchwork is enough.

This is a doctrinal study of school education from the elementary to the higher secondary stage, based on published sources; it involves no fieldwork. It deals with girls as a class but acknowledges, throughout, that girls are not a uniform group: caste, tribe, religion, disability, poverty and geography all alter the way the right is experienced.

B. Structure of the paper

Part II sets out the historical and conceptual background. Part III examines the constitutional framework and the Right to Education Act. Part IV analyses the case law. Part V turns to international human rights law. Part VI reviews the empirical position, and Part VII identifies the barriers that explain it. Part VIII evaluates the policy response, Part IX offers a short comparative view, Part X develops an analytical proposal, Part XI sets out recommendations, and Part XII concludes.

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[1] MINISTRY OF EDUC., GOV'T OF INDIA, Rajya Sabha Unstarred Question No. 538, Annexure (State/UT-wise GER and dropout rates for girl students at the secondary level, 2022-23 to 2024-25) (Feb. 4, 2026) (drawing on UDISE+ data), https://www.education.gov.in/sites/upload_files/mhrd/files/parliament_annexure_en/RSUQ_538_en.pdf.

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II. Historical and conceptual foundations

A. Girls' education before the Constitution

The exclusion of girls from formal schooling in India was never absolute, but it was systematic. For most of recorded history, learning was organised through caste and gender hierarchies that placed formal education largely out of reach for women and for the majority of men. The nineteenth century is the point at which this began to be challenged in an organised way. Savitribai and Jyotirao Phule opened a school for girls in Pune in 1848, an act that attracted social hostility and that is now regarded as a founding moment of modern girls' education in India. Fatima Sheikh worked alongside them in the same enterprise. Reformers in Bengal and elsewhere pressed the case for women's schooling within the framework of social reform.

Colonial policy was ambivalent. The Despatch of 1854, usually called Wood's Despatch, endorsed female education in principle, and the Hunter Commission of 1882 returned to the subject, yet public spending on girls' schooling remained small and was heavily dependent on private and missionary effort.[2] The legacy was a country that reached independence with very low female literacy and a deeply unequal school system.

B. The Constituent Assembly and the Directive Principle

The framers of the Constitution were conscious of the educational deficit but chose not to make education a justiciable fundamental right. The explanation usually offered is one of resources: the new State, it was thought, could not be made answerable in court for a commitment it could not immediately fund.[3] Education was instead placed in Part IV. The original Article 45 directed the State to endeavour to provide free and compulsory education to all children up to the age of fourteen within ten years of the Constitution coming into force. That period expired in 1960 without the goal being met, and the obligation remained unfulfilled for decades.

The Kothari Commission of 1964-66 treated education as an instrument of national development and equality and recommended a common school system and a determined effort to close gender gaps.[4] The National Policy on Education 1986 went further and spoke of education as an agent of basic change in the status of women. These documents were influential in setting the agenda, but they were policy statements, not enforceable rights.

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[2] On the colonial background see generally Jean Drèze & Amartya Sen, India: Development and Participation (2002).

[3] Granville Austin, The Indian Constitution: Cornerstone of a Nation (1966).

[4] Education Commission, *Report of the Education Commission 1964-66* (Government of India 1966).

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C. Education as a right: the conceptual debate

Three ideas that are often run together need to be distinguished. The first is education as a service, something the State provides if it chooses to. The second is education as an entitlement, something an individual may claim as against the State. The third is education as a capability, a condition that enlarges what a person is able to do and to be. Amartya Sen and Martha Nussbaum have both argued, in different registers, that education is central to human development precisely because it expands the real freedoms a person enjoys.[5] For girls the capability account has particular force, since schooling alters not only earning prospects but age at marriage, health outcomes, and the capacity to resist violence and coercion.

Katarina Tomaševski's influential framework, later adopted by the UN Committee on Economic, Social and Cultural Rights, describes the right to education through four features: availability, accessibility, acceptability and adaptability.[6] The framework is useful here because it directs attention away from the narrow question of whether a seat exists and towards the broader question of whether a particular child can use it. A school that is available but unreachable is not accessible; a school with no usable toilet for girls is not acceptable; a school that expels a pregnant student is not adaptable. Each of these failures bears more heavily on girls than on boys, and each will recur in the analysis below.

D. Substantive equality

The second conceptual building block is the distinction between formal and substantive equality. Formal equality asks whether girls and boys are treated alike. Substantive equality asks whether the rules and structures in place leave girls in a position of genuine equality of opportunity, and recognises that identical treatment can entrench disadvantage where the starting points differ.[7] Indian constitutional law has accepted this distinction in the sphere of gender, and Article 15(3) is its textual home. This paper asks whether the same understanding has been carried into the field of education.

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[5] AMARTYA SEN, DEVELOPMENT AS FREEDOM (1999); MARTHA C. NUSSBAUM, WOMEN AND HUMAN DEVELOPMENT: THE CAPABILITIES APPROACH (2000).

[6] Katarina Tomaševski, *Human Rights Obligations: Making Education Available, Accessible, Acceptable and Adaptable* (Right to Education Primers No. 3, 2001); COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, *General Comment No. 13: The Right to Education (Article 13)*, U.N. Doc. E/C.12/1999/10 (1999).

[7] SANDRA FREDMAN, DISCRIMINATION LAW (2d ed. 2011).

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III. THE CONSTITUTIONAL FRAMEWORK

A. Equality and non-discrimination: Articles 14 and 15

Article 14 guarantees equality before the law and the equal protection of the laws. Article 15(1) prohibits discrimination by the State on grounds only of religion, race, caste, sex or place of birth. Read together they supply the baseline: no State school may refuse a girl admission because she is a girl, and no State policy may allocate educational resources on a gender-discriminatory basis. This is the formal guarantee, and it has long been uncontroversial.

Article 15(3) is more significant for present purposes. It permits the State to make special provision for women and children. The framers placed it as an exception to the rule against sex discrimination, but the Supreme Court has since read it as an affirmation that the Constitution contemplates remedial and protective measures for women. It is generally accepted that it authorises girls-only scholarships, hostels, residential schools and similar interventions. A girl child falls within both limbs of the clause, being at once a woman in the making and a child, and it is therefore the natural constitutional foundation for the targeted schemes discussed in Part VIII.

A small drafting point deserves attention. Article 29(2) forbids denial of admission to any educational institution maintained by the State or receiving State aid on grounds only of religion, race, caste or language. Sex is not mentioned. The omission is probably explained by the existence of Article 15(1), and it has not been understood as permitting the exclusion of girls. But it means that the only constitutional clause forbidding denial of admission to State institutions does not, on its face, extend to the ground most relevant to this study. Any such gap in language, even if it has no practical effect, is worth noting in a paper concerned with the clarity of girls' entitlements.

B. Life and dignity: Article 21

Article 21 protects life and personal liberty. Its expansion after *Maneka Gandhi v. Union of India*[8] and *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*[9] turned it into the principal source of unenumerated rights, including the right to live with dignity and the right to the necessities that make dignity possible. Education was drawn into this expansion in the early 1990s, as Part IV explains. For girls the importance of Article 21 lies in what it does beyond education in the narrow sense. It supports claims to bodily integrity, to health, to privacy, and to freedom from child marriage and sexual violence, all of which determine whether

[8] *Maneka Gandhi v. Union of India*, (1978) 1 S.C.C. 248 (India).
[9] *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, (1981) 1 S.C.C. 608 (India).

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schooling is possible. As Part IV shows, the Supreme Court has now made this connection explicit.

C. Article 21A and the Eighty-sixth Amendment

The Constitution (Eighty-sixth Amendment) Act 2002 made three changes.[10] It inserted Article 21A, under which the State must provide free and compulsory education to all children aged six to fourteen in such manner as the State may by law determine. It replaced Article 45, which now directs the State to provide early childhood care and education to children below six. And it added a Fundamental Duty in Article 51A(k) on parents and guardians to provide opportunities for education to their child or ward between six and fourteen.

Three features of the amendment bear directly on girls. First, the right is held by "all children", without distinction, and nothing in the text confines it to a particular sex, so it applies to every girl in the age bracket. Secondly, the phrase "in such manner as the State may, by law, determine" created a legislative layer, which led to the Right to Education Act, and it means that the content of the right is partly defined by statute. Thirdly, the age limits are a serious restriction. The right covers elementary education only. A girl who completes Class VIII at thirteen or fourteen has, in strict constitutional terms, exhausted her entitlement under Article 21A, and the years that follow, the years of greatest risk of dropout and marriage, fall outside it. The Supreme Court's reading of Article 21 in *Unni Krishnan* (discussed below) once supported a wider entitlement, but the text of Article 21A has since been understood to fix the limit.

D. Directive Principles and Fundamental Duties

Several Directive Principles supply interpretive support. Article 39(f) directs the State to ensure that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity. Article 39(e) protects the tender age of children from abuse. Article 46 requires the State to promote the educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections, a category in which a great many girls fall. Article 51A(e) casts on every citizen a duty to renounce practices derogatory to the dignity of women. Although Part IV is not enforceable in itself, the Supreme Court has repeatedly insisted that the fundamental rights and the directive principles are complementary and that the latter inform the meaning of the former.[11]

[10] The Constitution (Eighty-sixth Amendment) Act, 2002 (India).
[11] See *Unni Krishnan J P v. State of Andhra Pradesh*, (1993) 1 S.C.C. 645 (India).

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E. The Right to Education Act 2009

The Right of Children to Free and Compulsory Education Act 2009 (the RTE Act), in force since 1 April 2010, gives operational content to Article 21A.[12] Section 3 confers on every child aged six to fourteen the right to free and compulsory elementary education in a neighbourhood school. Section 8 places the primary burden on the appropriate Government, and section 9 on local authorities, to provide school infrastructure, ensure admission and attendance, and keep records of children in their areas. Section 4 makes special provision for children who have never been to school or who left without completing elementary education, entitling them to admission at an age-appropriate level with additional training. The last of these is of obvious importance to girls who have dropped out and wish to return.

The Act also prescribes minimum norms through its Schedule, including pupil-teacher ratios, a building with specified facilities, drinking water, and separate toilets for boys and girls. Section 12(1)(c) requires private unaided schools to reserve at least twenty-five per cent of entry-level seats for children from disadvantaged groups and weaker sections, with State reimbursement. Section 17 prohibits physical punishment and mental harassment. Section 29 requires the curriculum to be developed in a manner that, among other things, builds a child's knowledge and talent and is child-friendly. Section 31 charges the National Commission for the Protection of Child Rights and State Commissions with monitoring the safeguards, and section 32 provides for grievance redress at the local level.

Measured against the needs of girls, the Act has strengths and weaknesses. Among its strengths are the neighbourhood-school principle, the duty to provide separate toilets, the special provision for out-of-school children, and the monitoring role given to child rights commissions. Among its weaknesses is the fact that it nowhere places an explicit duty on the State to identify and respond to gender-specific causes of dropout. There is no requirement of a gender audit of school provision. There is no duty to track and re-enrol girls who leave because of marriage or pregnancy. And the whole scheme ends at fourteen. The Act protects the girl who has to be brought to school; it is largely silent about the girl who has to be kept there.

IV. JUDICIAL INTERPRETATION: FROM CHARITY TO ENTITLEMENT

A. The early recognition of a right to education

The Supreme Court first treated education as a fundamental right in *Mohini Jain v. State of Karnataka*,[13] where it struck down the capitation fee charged to students admitted to private

[12] The Right of Children to Free and Compulsory Education Act, 2009, No. 35, Acts of Parliament, 2009 (India).
[13] *Mohini Jain v. State of Karnataka*, (1992) 3 S.C.C. 666 (India).

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medical colleges under a Karnataka Government notification and held that the right to education flows directly from the right to life under Article 21. The Court reasoned that the right to life and the dignity of the individual cannot be assured without education, and that the directive principles on education should be read into Article 21. The judgment was criticised for the breadth of its holding, which on its logic extended to all levels of education.

The Constitution Bench in *Unni Krishnan J P v. State of Andhra Pradesh*[14] narrowed the position. It accepted that Article 21 includes a right to education but held that its content must be read in light of Articles 41, 45 and 46: every citizen has a right to free education up to the age of fourteen, after which the right is subject to the limits of the State's economic capacity and development. That calibration is what ultimately became Article 21A in 2002. For present purposes, *Unni Krishnan* is important because it linked education to the constitutional scheme as a whole and made clear that the directive principles are not mere moral exhortations.

B. The regulatory dimension: private schools and the RTE Act

A series of decisions has addressed the relationship between the right to education and the autonomy of private institutions. *TMA Pai Foundation v. State of Karnataka*[15] recognised the right to establish and administer educational institutions as an occupation under Article 19(1)(g) and, for minorities, as an expression of Article 30, while accepting reasonable regulation. After the 2002 amendment and the Act of 2009, the question was whether the twenty-five per cent quota under section 12(1)(c) could validly be applied to private unaided schools. In *Society for Unaided Private Schools of Rajasthan v. Union of India*[16] the Court upheld the Act and the quota as applied to non-minority unaided schools and to aided schools, while holding that it could not be applied to unaided minority schools. *Pramati Educational and Cultural Trust v. Union of India*[17] extended the exemption to all minority institutions, aided or unaided, and upheld Article 15(5), which had been inserted in 2005 to permit special provision for the admission of socially and educationally backward classes, Scheduled Castes and Scheduled Tribes to educational institutions.

These cases are not about girls as such, but they shape the field within which girls' claims operate. By accepting that the State may impose duties on private schools, the Court prevented the right to education from becoming a right only against government schools. The

[14] *Unni Krishnan*, *supra* note 11.
[15] *TMA Pai Foundation v. State of Karnataka*, (2002) 8 S.C.C. 481 (India).
[16] *Society for Unaided Private Schools of Rajasthan v. Union of India*, (2012) 6 S.C.C. 1 (India).
[17] *Pramati Educational and Cultural Trust v. Union of India*, (2014) 8 S.C.C. 1 (India); The Constitution (Ninety-third Amendment) Act, 2005 (India).

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decisions also confirm that a statutory scheme of social inclusion is constitutionally permissible, a point that matters if gender-specific obligations are to be imposed on schools of every type.

C. Gender equality and stereotypes

The principal gender-equality decisions of the Court come from outside the education field, but they supply doctrine on which a girl's right to education can draw. In *Anuj Garg v. Hotel Association of India*[18] the Court struck down a statutory prohibition on the employment of women in places serving liquor, holding that protective discrimination which rests on stereotyped notions of women's role and vulnerability, and which restricts their autonomy, cannot be sustained. The case has been widely cited for the proposition that a law framed as protection may be a form of disadvantage if it closes doors to women instead of making the doors safe to pass through. In *Indian Young Lawyers Association v. State of Kerala*[19] the majority again rejected patriarchal assumptions as a justification for excluding women.

The reasoning applies readily to schooling. A family that withdraws its daughter from school "for her safety" and a school that restricts girls' movement for the same reason are applying the logic that *Anuj Garg* rejected: the burden of unsafe public space is placed on the girl, instead of on the State and the school. A constitutional reading of the right to education must therefore ask whether the State's response to danger takes the form of making the school safe or of tacitly accepting her absence.

D. Child marriage and bodily autonomy

In *Independent Thought v. Union of India* the Court held that the exception to the offence of rape in the Indian Penal Code, which exempted sexual intercourse by a man with his wife aged between fifteen and eighteen, was inconsistent with the rights of the girl child and had to be read down. The Court found, on the documentary material before it, that early marriage could harm a girl child not only in her physical and mental health but also in her nutrition, her education and her employability.[20] In 2024, in *Society for Enlightenment and Voluntary Action v. Union of India*, a Bench of the Court hearing a petition on the enforcement of the Prohibition of Child Marriage Act 2006 issued guidelines directing that prevention be prioritised, that officers solely responsible for the functions of Child Marriage Prohibition Officer be appointed

[18] *Anuj Garg v. Hotel Association of India*, (2008) 3 S.C.C. 1 (India).
[19] *Indian Young Lawyers Association v. State of Kerala*, (2019) 11 S.C.C. 1 (India); see *Kantaru Rajeevaru v. Indian Young Lawyers Ass'n*, (2020) 2 S.C.C. 1 (India) (referring questions to a larger Bench).
[20] *Independent Thought v. Union of India*, (2017) 10 S.C.C. 800 (India); Writ Petition (Civil) No. 382 of 2013, ¶ 87 (Lokur, J.) (India Oct. 11, 2017). The Bharatiya Nyaya Sanhita, 2023, No. 45, Acts of Parliament, 2023, § 63, exception 2 (India), which replaced the Code from 1 July 2024, sets the age in the exception at eighteen.

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at the district level, and that services be coordinated across departments.[21] On the relationship between the statute and personal laws, the Court recorded the Union's request for a direction that the Act prevails, noted that the 2021 Amendment Bill sought to give it express overriding effect, and treated the issue as one before Parliament.[22] For this paper, the importance is that the Court has explicitly connected the prevention of child marriage with the educational and developmental interests of girls.

E. The hijab litigation

The limits of the present doctrine are illustrated by the litigation over the prohibition of headscarves in certain pre-university colleges in Karnataka. The Karnataka High Court upheld the State's order in *Resham v. State of Karnataka*, a decision of March 2022. When the matter reached the Supreme Court, the two judges delivered a split verdict on 13 October 2022 in *Aishat Shifa v. State of Karnataka*. Justice Gupta upheld the restriction, while Justice Dhulia considered the essential religious practice inquiry unnecessary to the dispute and stressed the effect of the restriction on the education of the girl child, observing that for a girl from a conservative family the hijab may be her "ticket to education". In view of the divergent opinions, the matter was placed before the Chief Justice of India for the constitution of an appropriate Bench. The case is relevant not for its outcome on religious freedom, which falls outside this paper, but because it exposed the extent to which, absent a clearly articulated doctrine on the right of girls to remain in school, a girl's access to education can turn on competing claims in which her educational interest is only one consideration.[23]

F. *Dr Jaya Thakur v. Government of India* (2026)

The most significant recent judgment is *Dr Jaya Thakur v. Government of India*, cited as 2026 INSC 97 and decided by the Supreme Court on 30 January 2026 in the exercise of its original jurisdiction under Article 32.[24] The petition raised the lack of gender-segregated toilets and of access to menstrual absorbents in schools, and framed the issues under Articles 14, 21 and 21A.

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[21] *Society for Enlightenment and Voluntary Action v. Union of India*, 2024 INSC 790, ¶¶ 210–11 (India Oct. 18, 2024); The Prohibition of Child Marriage Act, 2006, No. 6, Acts of Parliament, 2007 (India).

[22] *Society for Enlightenment and Voluntary Action*, *supra* note 21, ¶¶ 213–14.

[23] *Aishat Shifa v. State of Karnataka*, Civil Appeal No. 7095 of 2022, ¶¶ 80–81 (Dhulia, J.) (India Oct. 13, 2022); *Resham v. State of Karnataka*, 2022 SCC OnLine Kar 315 (Kar. Mar. 15, 2022).

[24] *Dr Jaya Thakur v. Government of India*, 2026 INSC 97, Writ Petition (Civil) No. 1000 of 2022, ¶¶ 2, 16 (India Jan. 30, 2026). For accounts of the judgment, see Aastha Kaushik, *Inaccessibility of Menstrual Hygiene Undermines Dignity of Girl Child: Apex Court Delivers Verdict on Implementation of Menstrual Hygiene Policy for Girls' in Schools*, VERDICTUM (Jan. 30, 2026), https://www.verdictum.in/court-updates/supreme-court/inaccessibility-menstrual-hygiene-dignity-girl-child-verdict-implementation-menstrual-hygiene-policy-girls-schools-1606014; LawFoyer, *Dr. Jaya Thakur v. Government of India & Ors., 2026 INSC 97*, https://lawfoyer.in/dr-jaya-thakur-v-government-of-india-ors-2026-insc-97/; Justy Thomas, *Menstrual Health Is Enforceable Right after Supreme Court Ruling*, POLICY CIRCLE, https://www.policycircle.org/opinion/menstrual-health-article-21/amp/.

The Court held that the right to life under Article 21 includes the right to menstrual health; that the inaccessibility of menstrual hygiene measures undermines the dignity of a girl child and strips away her right under Article 14 to participate on equal terms in school; and that the right to education under Article 21A and the Act comprises free, compulsory and quality education.[25] Two aspects of the reasoning deserve emphasis. The first is that the Court treated education as a "multiplier right", one that enables the exercise of other rights, and in setting out the right to education it drew on the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Rights of the Child (CRC).[26] The second is that the Court held that free education under Article 21A and the Act includes all kinds of charges or expenses that would prevent a child from pursuing and completing elementary education, so that the right is not exhausted by the absence of tuition fees.[27] On those premises, the Court issued directions that schools provide functional, gender-segregated toilets with water and soap, accessible to students with disabilities, free sanitary napkins and safe disposal facilities; that menstrual health and puberty education be included in curricula through the national and State bodies; and it stated that non-compliant private schools would be de-recognised under the RTE Act. It also issued a continuing mandamus requiring the Union to report on compliance.[28]

Three points follow. First, the judgment endorses the proposition on which this paper is built: that the right to education has to be understood by reference to the conditions that make attendance possible, and not by reference to admission alone. Second, it adopts substantive equality in terms, accepting that the absence of these facilities entrenches gendered disadvantage.[29] Third, it grounds the right in Article 21 and not merely in Article 21A, and thereby avoids the age ceiling in the latter, at least as regards the dignity-based components. That last point may prove the most consequential, because it suggests a route by which the protection of girls at the secondary stage can be built on the right to life and dignity even though Article 21A does not extend there.

G. Assessment

The cases show a gradual movement. In the 1990s the Court's task was to establish that education is a right at all. In the 2000s and 2010s it was occupied with the allocation of burdens between State and private actors. It has also begun to engage with the specific obstacles to girls' schooling, and in 2026 it directly connected an infrastructural deficiency with a gendered denial

[25] *Jaya Thakur*, *supra* note 24, ¶¶ 172(c)–(f).
[26] *Id.* ¶¶ 21, 23–25, 172(a).
[27] *Id.* ¶¶ 145, 172(f).
[28] *Id.* ¶¶ 172(g), 173, 178.
[29] *Id.* ¶¶ 144, 172(b); see also *id.* ¶ 126.

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of Article 21A. The pattern suggests that the jurisprudence is still catching up with the lived reality. Importantly, the more progressive decisions have arisen in public interest litigation, and enforcement depends on administrative follow-through that courts cannot easily supervise. The gap between declaration and delivery is the subject of Part VII.

V. THE INTERNATIONAL HUMAN RIGHTS FRAMEWORK

A. The treaty obligations

The Universal Declaration of Human Rights recognises, in Article 26, that everyone has the right to education, that elementary education shall be free and compulsory, and that education shall be directed to the full development of the human personality.[30] The Declaration is not a treaty, but its content has been taken up in binding instruments, and Indian courts have long referred to it as an interpretive aid.

The ICESCR, to which India became a party in 1979,[31] provides in Article 13 that primary education shall be compulsory and free to all, and that secondary education in its different forms shall be made generally available and accessible to all by every appropriate means, with the progressive introduction of free education. Article 2(2) guarantees the exercise of Covenant rights without discrimination. Article 3 requires States to ensure the equal right of men and women to the enjoyment of all the Covenant rights. The Committee's General Comment No 13 states that the right requires education to be available, accessible, acceptable and adaptable, and its General Comment No 16 emphasises that formal equality is not enough and that substantive equality of men and women must be pursued.[32]

The CRC, to which India became a party in 1992,[33] is more specific. Article 28 requires States to make primary education compulsory and free, to encourage the development of different forms of secondary education and make them available and accessible, and to take measures to encourage regular attendance at school and the reduction of dropout rates. Article 29 sets out the aims of education, including the development of the child's personality, respect for human rights, and preparation for responsible life in a free society in the spirit of equality of sexes. Articles 2 and 3 impose a duty of non-discrimination and require the best interests of the child to be a primary consideration.

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[30] Universal Declaration of Human Rights, G.A. Res. 217A (III), art. 26 (Dec. 10, 1948).
[31] International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3.
[32] COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, *General Comment No. 13*, *supra* note 6; COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, *General Comment No. 16: The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights*, U.N. Doc. E/C.12/2005/4 (2005).
[33] Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.

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The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which India ratified in 1993,[34] is the most directly relevant instrument. Article 10 requires States to take all appropriate measures to eliminate discrimination against women in education and to ensure equal conditions, including equal access to studies, the elimination of stereotyped concepts of the roles of men and women, and the reduction of female student dropout rates and the organisation of programmes for girls who have left school prematurely. Article 16(2) provides that the betrothal and the marriage of a child shall have no legal effect. In 2017 the CEDAW Committee adopted General Recommendation No 36 on the right of girls and women to education, which sets out in detail the steps States should take to ensure that girls can enter, remain in, and complete education, including addressing child marriage, gender-based violence in schools, and inadequate sanitation.[35] India ratified the Convention with declarations on Articles 5(a) and 16(1), concerning personal laws and community practices, and on Article 16(2), concerning the registration of marriages, and with a reservation to Article 29(1), but none of these touches Article 10.

Beyond the treaties, the Sustainable Development Goals, which India has endorsed, commit States to ensuring inclusive and equitable quality education (Goal 4), including the elimination of gender disparities in education (Target 4.5), and to achieving gender equality and eliminating harmful practices such as child marriage (Goal 5).[36] They are not binding, but they offer a measurable standard against which performance can be assessed.

B. Domestic status of international obligations

India follows a dualist approach: under Article 253, Parliament may legislate to give effect to international agreements, and a treaty does not become part of domestic law without legislation. However, Article 51(c) directs the State to foster respect for international law and treaty obligations, and the Supreme Court has repeatedly held that international norms may be read into fundamental rights where they are consistent with them and domestic law is silent. In *Vishaka v. State of Rajasthan*[37] the Court relied on CEDAW to frame guidelines against sexual harassment at the workplace in the absence of legislation, and in *Apparel Export Promotion*

[34] Convention on the Elimination of All Forms of Discrimination against Women, Dec. 18, 1979, 1249 U.N.T.S. 13.

[35] COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN, *General Recommendation No. 36 (2017) on the Right of Girls and Women to Education*, U.N. Doc. CEDAW/C/GC/36; *Joint General Recommendation No. 31 of the Committee on the Elimination of Discrimination against Women / General Comment No. 18 of the Committee on the Rights of the Child on Harmful Practices* (2014).

[36] G.A. Res. 70/1, *Transforming Our World: The 2030 Agenda for Sustainable Development* (Sept. 25, 2015), Goals 4 and 5.

[37] *Vishaka v. State of Rajasthan*, (1997) 6 S.C.C. 241 (India).

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Council v. A K Chopra[38] it affirmed that courts must give due regard to international conventions and norms, including CEDAW and the Beijing Declaration, in construing domestic law where there is no inconsistency between them. The *Jaya Thakur* judgment confirms that the same approach applies to the right to education, as it drew on the ICESCR, CEDAW and the CRC in setting out the content of that right.[39]

In practice, the interpretive material of the treaty bodies, notably General Comment No 13 and CEDAW General Recommendation No 36, is available to litigants and courts as persuasive authority. A well-framed petition can use the four-part framework of availability, accessibility, acceptability and adaptability as a checklist against which to measure State action, and can use Article 10 of CEDAW to argue that a failure to address dropout is itself a form of discrimination.

C. The gap between obligation and reporting

One further point concerns accountability. India has submitted periodic reports to the treaty bodies, but the treaty bodies' concluding observations are not enforceable and are rarely cited in domestic litigation or legislative debate. India has also not accepted the individual complaint procedure under the Optional Protocol to CEDAW. The international framework thus operates principally as a source of norms, and its force in domestic practice depends on the willingness of courts and executive agencies to adopt it.

VI. The Empirical Picture: What the Data Show

A. The headline trend

The official data show real progress. According to figures from the Unified District Information System for Education Plus (UDISE+) placed before Parliament, the dropout rate for girls at the secondary level fell from 15.4 per cent in 2022-23 to 12.6 per cent in 2023-24 and to 9.6 per cent in 2024-25. The gross enrolment ratio for girls at the secondary level was 80.1, 78.0 and 80.2 in the same years.[40] Table 1 sets out the national trend.

Year	Gross enrolment ratio	Dropout rate (%)
2022-23	80.1	15.4
2023-24	78.0	12.6

[38] *Apparel Export Promotion Council v. A K Chopra*, (1999) 1 S.C.C. 759 (India).
[39] *Jaya Thakur*, *supra* note 24, ¶¶ 21, 24–25.
[40] Ministry of Educ., *supra* note 1; Dep't of Sch. Educ. & Literacy, Ministry of Educ., *UDISE+ Report 2022-23*, tbls. 6.1, 6.13, https://dashboard.udiseplus.gov.in/report2026/static/media/UDISE+2022_23_Booklet_existing.d209e7c7516d77939da9.pdf; *UDISE+ Report 2023-24*, tbls. 6.1, 6.13, https://dashboard.udiseplus.gov.in/report2026/static/media/UDISE+2023_24_Booklet_existing.309eabf9e4889db93bcb.pdf; *UDISE+ Report 2024-25*, tbls. 6.1, 6.13, https://dashboard.udiseplus.gov.in/report2026/static/media/UDISE+2024_25_Booklet_existing.118ba29d4773e6372f72.pdf.

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Year	Gross enrolment ratio	Dropout rate (%)
2024-25	80.2	9.6

Table 1: Girls at the secondary level, India (UDISE+)

Source: Ministry of Education, Rajya Sabha Unstarred Question No. 538 (4 February 2026), based on UDISE+; UDISE+ Reports 2022-23, 2023-24 and 2024-25, Tables 6.1 and 6.13.

Within this national picture the variation between States is considerable. Table 2 selects a few States to illustrate it.

State	2022-23	2023-24	2024-25
Assam	29.9	25.0	16.7
Bihar	28.8	25.1	6.8
Jharkhand	25.5	15.1	2.4
Gujarat	21.2	18.3	14.6
Madhya Pradesh	20.7	15.5	14.6
Karnataka	12.3	19.6	14.6
Kerala	5.3	2.5	3.7

Table 2: Girls' secondary dropout rate (%), selected States (UDISE+)

Source: as for Table 1. Figures are as reported; see the caution in the next section.

B. A caution about the data

These figures should be read with care. Some of the movements are so abrupt as to invite scepticism. Bihar's girls' secondary dropout rate is reported as 25.1 per cent in 2023-24 and 6.8 per cent a year later, and Jharkhand's as 15.1 and then 2.4. Arun Mehta has noted that the 2022-23 data coincide with a change in the reporting methodology, including the move to student-level records linked to unique identifiers, and that the apparent spike in that year is better explained by the transition than by a real reversal.[41] He has also questioned whether the figures for dropout in 2024-25 understate the extent of attrition, given declining enrolment in the school system overall, the calculation of rates across all schools, and changes in the reference child population.[42] For legal analysis, statistics offered as evidence of compliance with a constitutional right should be treated like any other evidence, with attention to how they were produced.

[41] Arun C. Mehta, *Girl Child Education in India: Progress and Persistent Gaps*, EDUCATION FOR ALL IN INDIA (June 2026), https://educationforallinindia.com/girl-child-education-in-india-progress-and-persistent-gaps/.
[42] Arun C. Mehta, *UDISE+ Analysis: 68 Lakh Dropouts between 2023-24 and 2024-25; Is MoE Underestimating Dropout Rates?*, CAREERS360 (Sept. 12, 2025), https://news.careers360.com/udise-plus-2024-25-analysis-68-lakh-dropouts-education-ministry-underestimate-enrolment-school-database-udiseplus-portal-report.

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C. Disaggregation: who is still left behind

National averages conceal the concentration of disadvantage. The Ministry's own tabulation of dropout rates by social group for 2023-24 gives an overall secondary dropout rate of 14.1 per cent and 12.6 per cent for girls, and does not break the social-group figures down by sex. Enrolment figures show that the position differs by stage: in 2024-25 the gross enrolment ratio of Scheduled Tribe girls at the higher secondary stage was 55.5, against 60.9 for all girls, although at the secondary stage the ratios for Scheduled Caste girls (84.8) and Scheduled Tribe girls (83.8) were above the ratio for all girls (80.2).[43] Whether caste and tribal status depress girls' retention should be tested by disaggregated data that the State ought to publish.

D. Child marriage

The best available evidence on child marriage comes from the National Family Health Survey. The proportion of women aged 20 to 24 who were married before eighteen fell from 26.8 per cent in NFHS-4 (2015-16) to 23.3 per cent in NFHS-5 (2019-21). That is a decline, but a slow one, and prevalence in some States, including West Bengal and Bihar, remains close to two-fifths. It is estimated, in figures frequently cited from UNICEF, that India has the largest absolute number of child brides in the world.[44] Education and child marriage reinforce one another: a girl who is out of school is far more likely to be married early, and a girl who is married early is far less likely to continue her schooling. Enforcement under the 2006 Act has been weak: the National Crime Records Bureau recorded on average only about 360 child marriage cases a year during 2011-20, markedly fewer than the survey figures would suggest.[45]

The evidence supports a qualified conclusion. Enrolment parity, and in several categories girls' enrolment above boys', has been achieved. Dropout at the primary level is very low. But retention at the secondary stage, the relative disadvantage of tribal girls at the higher secondary stage, the unreliability of some of the dropout figures and the persistence of child marriage show that the right has not been fully realised, and that the problem has moved from access to retention.

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[43] MINISTRY OF EDUC., GOV'T OF INDIA, Rajya Sabha Unstarred Question No. 1156, Annexure (dropout rates for primary and secondary schools for girls, SC and ST, 2021-22 to 2023-24) (July 30, 2025), https://www.education.gov.in/sites/upload_files/mhrd/files/parliament_annexure_en/rsuq1156en.pdf. For the gross enrolment ratios, see DEP'T OF SCH. EDUC. & LITERACY, *UDISE+ Report 2024-25*, *supra* note 40, tbls. 6.1–6.3.

[44] Swathi Ramesh Rao & Shubham Mudgil, *A Data Story on Female Child Marriage in India*, IDEAS FOR INDIA (Mar. 20, 2023), https://www.ideasforindia.in/topics/human-development/a-data-story-on-female-child-marriage-in-india.html. See also INTERNATIONAL INSTITUTE FOR POPULATION SCIENCES & MINISTRY OF HEALTH AND FAMILY WELFARE, *National Family Health Survey (NFHS-5), India, 2019-21* (2021). On the absolute number, see UNFPA & UNICEF, *Ending Child Marriage in India* (Sept. 4, 2017), https://asro.unfpa.org/en/publications/ending-child-marriage-india.

[45] Rao & Mudgil, *supra* note 44.

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VII. Barriers to the realisation of the right

A. Legal barriers

The first set of barriers is internal to the law itself. The age ceiling in Article 21A has been noted. A second is the inadequate integration of the education law with the child protection law. The Prohibition of Child Marriage Act 2006 sets the minimum age of marriage at eighteen for girls and twenty-one for boys, a differential that has been criticised as reinforcing the stereotype that women are ready for adulthood earlier. A Bill to raise the minimum age for women to twenty-one was introduced in Parliament in December 2021 and referred to a Standing Committee, but it lapsed on the dissolution of the Seventeenth Lok Sabha in June 2024.[46] Whatever its merits, the proposal does not address the question of schooling directly, and there is no statutory provision requiring that a girl who has been the subject of a child marriage case be supported to return to school.

A third legal barrier is the weakness of the Act's remedies. Section 32 of the RTE Act provides for grievance redress by the local authority, but its practical value depends on the availability of a functioning forum. A girl, or her family, who has been refused admission or pushed out has seldom the means to litigate. The result is that most violations are never adjudicated, and the case law described in Part IV represents only a small and unrepresentative fraction of the underlying problem.

B. Physical and infrastructural barriers

The absence of functional, private toilets for girls is the best documented infrastructural barrier, and it was the central subject of *Jaya Thakur*. Closely related are the lack of water, the lack of menstrual hygiene products and disposal facilities, and the lack of teachers trained to deal with adolescent health. The distance to school is another. The neighbourhood-school norm of the RTE Act is meant to secure proximity at the elementary level, but at the secondary stage schools are fewer and farther apart, and for girls the journey implicates safety as well as time. Where transport is unavailable or unsafe, parents commonly decide that it is safer to keep a girl at home.

[46] The Prohibition of Child Marriage (Amendment) Bill, 2021, introduced in the Lok Sabha on 21 December 2021; *Bill to Raise Legal Marriage Age for Women Lapses as 17th Lok Sabha Dissolves*, Outlook (June 8, 2024), https://www.outlookindia.com/national/bill-to-raise-legal-marriage-age-for-women-lapses-as-17th-lok-sabha-dissolves.

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C. Safety and violence

School itself may be unsafe. Sexual harassment, corporal punishment and the failure of schools to deal with complaints affect attendance, and the fear of harassment on the way to school is among the reasons parents most often give for ending a daughter's schooling. The Protection of Children from Sexual Offences Act 2012 provides a framework of offences and a child-friendly procedure,[47] and section 17 of the RTE Act bans corporal punishment, but there is little evidence that schools systematically carry out the safeguarding duties that these laws imply. The Supreme Court's recognition in *Avinash Mehrotra v. Union of India*[48] that children have a right to a safe school environment provides a doctrinal basis for requiring schools to adopt and implement safeguarding protocols, but the basis has been little used in the context of gender-based violence.

D. Economic and social barriers

Poverty bears on girls differently from boys. Where household resources are scarce, a family may prefer to educate a son, whose earning prospects it regards as more secure, and to keep a daughter at home to care for siblings, collect water or fuel, and perform other unpaid work. The opportunity cost of a daughter's schooling is therefore real, and it grows as she approaches adolescence. The prevalence of dowry reinforces the calculation, because a family may regard expenditure on a daughter's education as less valuable than expenditure that goes towards her marriage. These economic pressures interact with social norms about family honour and female mobility, which in many communities lead to the early restriction of girls to the domestic sphere.

E. Intersectional disadvantage

The experience of a girl who is a member of a Scheduled Tribe, a Scheduled Caste, a minority community, a migrant family or who lives with a disability is shaped by multiple disadvantages that do not simply add together. A Dalit girl may face discrimination from teachers and classmates as well as the barriers described above; a tribal girl may live in a hamlet with no secondary school within a reasonable distance; a girl with a disability may find that the toilet block and the classroom are inaccessible. The RTE Act speaks of a "disadvantaged group" in section 2(d), but a framework that deals with each category in isolation will miss the girl at the intersection. Legal analysis and public data collection both need to move to intersectional categories.

[47] The Protection of Children from Sexual Offences Act, 2012, No. 32, Acts of Parliament, 2012 (India).
[48] *Avinash Mehrotra v. Union of India*, (2009) 6 S.C.C. 398, ¶ 39 (India).

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F. Quality and the meaning of "education"

A further barrier concerns educational quality. Enrolment is not learning. A girl who attends school regularly but who does not acquire basic literacy and numeracy has received something less than the education that Article 21A promises, and the Supreme Court has said that the right comprises free, compulsory and quality education.[49] Poor quality has a gendered effect on the decision to remain in school: where parents see that attendance produces little learning, the case for the cost of keeping a daughter in school, and for the risks of her travelling to it, appears weaker. Investment in teacher availability and teaching quality is therefore a matter of equality as well as of pedagogy.

VIII. Policy and Institutional Response

A. Targeted schemes

The State has complemented the legal framework with a range of schemes, most of which can be traced to Article 15(3). The Kasturba Gandhi Balika Vidyalaya scheme, begun in 2004, provides residential upper-primary schools for girls in educationally backward blocks. The National Scheme of Incentive to Girls for Secondary Education, introduced in 2008, offers a financial incentive to girls from Scheduled Castes and Scheduled Tribes who enrol in Class IX. The Beti Bachao Beti Padhao campaign was launched in 2015 to address the declining child sex ratio and to promote the education of girls, and the Sukanya Samriddhi Yojana, launched in the same year, offers a savings instrument for girls' future education and marriage. The Menstrual Hygiene Scheme of 2011 aimed to promote hygiene among adolescent girls in rural areas. Several States have operated their own incentives, of which the bicycle scheme for girls in Bihar, begun in 2006, is the best known.

In 2018 the centrally sponsored schemes for school education were brought together under Samagra Shiksha, an integrated scheme covering the school stage from pre-school to Class XII, with a stated emphasis on gender and equity. The National Education Policy 2020 proposes the creation of a Gender-Inclusion Fund to help States implement priority programmes for girls and transgender students, sets a goal of universal access to quality education from pre-school to Grade 12, and adopts a curricular structure covering the ages of three to eighteen.[50]

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[49] *Jaya Thakur*, *supra* note 24, ¶ 172(f).

[50] Ministry of Human Resource Development (now Ministry of Education), *National Education Policy 2020*, paras. 3.1, 4.1, 6.8 (Government of India 2020), https://static.pib.gov.in/WriteReadData/userfiles/NEP_Final_English_0.pdf.

B. An assessment

These measures reflect a serious commitment, and they appear to have contributed to the gains in enrolment. But they have three limitations from a legal perspective. First, they are schemes and not rights. A scheme may be modified, curtailed or discontinued by executive decision, and a girl who falls outside its criteria has no claim. Second, the incentives address the cost side of schooling more than its safety and quality dimensions. Third, they are not linked to any systematic duty of monitoring and accountability: no statutory body is responsible for ensuring that a particular girl who drops out is traced and offered a way back.

An entitlement is legally claimable, whereas an executive scheme may remain discretionary, and the legal system should be wary of relying on discretionary programmes to carry what is in principle a fundamental right. The Court's insistence in *Jaya Thakur* on binding directions with a statutory sanction, the possible de-recognition of non-compliant schools, is a step in the direction of converting programme objectives into enforceable duties, and it provides a template for further reform.

IX. Comparative perspectives

The comparison with other jurisdictions helps clarify the Indian position. The Constitution of South Africa guarantees, in section 29(1)(a), a right to a basic education, and the Constitutional Court has treated that right as immediately realisable and not subject to progressive realisation. In *Governing Body of the Juma Musjid Primary School v. Essay NO*, a dispute over the eviction of a public school from private land, the Court held that the State bore the primary positive obligation to provide access to schools and that the private owner bore a negative obligation not to impair the right to basic education; it required reports on alternative placements for the learners before it granted the eviction order.[51] The approach is notable for its refusal to allow resource arguments to dilute a core entitlement, and for its readiness to supervise the State's performance.

In Pakistan, the Eighteenth Amendment of 2010 inserted Article 25A, which obliges the State to provide free and compulsory education to children from five to sixteen. The constitutional age band is therefore wider than India's, though implementation has been uneven and gender gaps in enrolment remain large. In Afghanistan, by contrast, restrictions imposed since 2021 have barred girls from secondary schooling, and the international response, including the findings of UN human rights bodies, has treated the exclusion as a serious violation of the right

[51] *Governing Body of the Juma Musjid Primary School v. Essay NO*, [2011] ZACC 13, 2011 (8) BCLR 761 (CC), ¶¶ 4–5, 37, 57–58, 60 (S. Afr.).

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to education and of the prohibition of discrimination. The comparison is a reminder of how much depends on the State's willingness to treat girls' education as a legal duty.

The experience of conditional transfer programmes elsewhere is also instructive. Bangladesh's female secondary school stipend programme, begun in the 1990s, tied financial support for girls to school attendance and the postponement of marriage and is widely credited with raising girls' secondary enrolment. Brazil's Bolsa Família conditions payment on school attendance. These programmes suggest that incentives are most effective where they are institutionalised, predictable and linked to retention and not merely to enrolment. They also underline the argument of this paper that programmes should be bound to legal guarantees and not float free of them. The comparative lesson is not that India should copy any particular model but that rights, incentives and enforcement are most powerful when they operate together.

X. Towards an enabling conditions approach to Article 21A

A. The proposal

The analysis supports an interpretive approach that translates the substantive-equality reasoning of recent decisions into a settled doctrine. This paper proposes what it calls an enabling conditions approach to Article 21A. The approach rests on a simple proposition: the State's obligation under Article 21A is not discharged by providing a school place, but only by securing the conditions in which a child can realistically attend, remain in and complete elementary education. Where those conditions are absent for a particular class of children, and the absence follows a pattern linked to sex, caste or another protected ground, the State is in breach of Articles 14 and 21A together.

B. The elements

The approach has three elements, corresponding to the stages of a girl's educational life. The first is entry: the State must ensure that admission is available in a school within reach, without charges or practices that exclude, and that a girl who has been out of school is able to return. The second is continuity: the State and the school must provide the conditions of safe and dignified attendance, including toilets, water, menstrual health provision, a safe route to school, and freedom from harassment and corporal punishment, and must act when a girl's attendance falls. The third is completion and transition: the State must support the girl to complete the elementary cycle and to move into secondary education, and must not allow the age ceiling of Article 21A to serve as a point at which support ends.

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C. Legal foundations

The doctrinal support for the approach is found in the material already discussed. *Jaya Thakur* establishes that free education under Article 21A and the Act covers charges and expenses that prevent completion, and that the absence of basic menstrual hygiene facilities impairs rights under Articles 14, 21 and 21A. *Anuj Garg* and the majority in *Indian Young Lawyers Association* hold that stereotyped assumptions cannot justify burdens on women's participation. *Independent Thought* recognises the harm that child marriage does to the education of girls. Article 10 of CEDAW and General Comment No 13 supply an internationally recognised structure against which State conduct can be measured. The approach does not therefore require a new right; it organises existing ones into a test that courts and administrators can apply.

D. A proposed test

In practice a court might ask four questions. Is there a condition, practice or omission that makes it materially harder for girls than for boys to attend or complete school? Is the condition within the control of the State or of a school subject to the State's regulation? Has the State taken reasonable and timely steps, proportionate to the seriousness of the effect on girls, to remove it? And, if the State relies on resource constraints, has it shown that it has used its available resources, and prioritised the elements of the right with the greatest effect on equality? The fourth question is modelled on the approach of progressive realisation in the ICESCR, but it is applied here to a right, elementary education, that Indian law has made immediate and justiciable.

E. Objections

Two objections may be anticipated. The first is that the approach expands the judicial role into matters of resource allocation. The reply is that courts have long supervised the implementation of rights with resource implications, and that the test is a deferential one: it asks whether the State has acted reasonably and has been candid about constraints, not whether it has provided the ideal. The second objection is that the approach may be difficult to apply in the absence of reliable data. That is true, and it is a further reason for the reform proposed below, which would require States to collect and publish gender-disaggregated data on barriers to attendance.

XI. Recommendations

On the basis of the preceding analysis, the paper makes the following recommendations, grouped by the institution that would have to act.

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A. Legislative reform

1. Parliament should consider extending the statutory right to free education from the current six to fourteen years to cover pre-primary and secondary education, up to the age of eighteen, in keeping with the goal of universal access in the National Education Policy 2020.[52] That would require amendment of Article 21A and of the Act, and would end the legal cliff-edge at fourteen.
2. The RTE Act should be amended to impose an express duty on the appropriate Government and local authorities to identify, track and re-enrol girls who leave school, including on the ground of marriage or pregnancy, and to provide bridge courses and support for their re-entry. It should provide expressly that marriage or pregnancy is not a ground for expulsion or refusal of re-admission.
3. The Act should require a periodic gender audit of every school's facilities and practices, covering toilets, water, menstrual health provision, safe transport and safeguarding policies, and should make the results public.
4. The Schedule to the Act should be amended to give statutory force to the directions in *Jaya Thakur*, so that the duty to provide menstrual hygiene facilities does not depend on a judicial order alone. Article 29(2) deserves a clarifying amendment, or at least clear judicial confirmation, that sex is a prohibited ground for denial of admission.

B. Judicial practice

1. Courts hearing public interest litigation on education should consider the enabling conditions approach proposed here, and should make monitoring orders with defined timelines and periodic reporting, so that directions of the kind issued in *Jaya Thakur* are followed through. Where appropriate, courts should appoint a commissioner or request the State or National Commission for the Protection of Child Rights to report on compliance.
2. Courts should draw on international norms, in particular CEDAW Article 10 and General Recommendation No 36, as aids in construing Article 21A and Article 14, and should be willing to say so in their reasons.

[52] MINISTRY OF HUMAN RESOURCE DEVELOPMENT, *supra* note 50, paras. 3.1, 4.1.

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C. Executive and administrative action

1. The Ministry of Education and State governments should publish data on dropout and retention disaggregated by sex, caste, tribe, religion, disability and district, together with a clear account of the methodology and of any changes to it, so that claims of progress can be verified.
2. Child marriage prevention and school retention programmes should be integrated. Each Child Marriage Prohibition Officer should be required to coordinate with the local education authority, and a school's failure to report an unexplained absence of a girl for a defined period should trigger an inquiry.
3. Safe transport to secondary school, whether through bicycle schemes, school buses or residential provision, should be treated as a core element of the right, with budgetary provision that does not depend on discretionary programmes.
4. Schools should be required to adopt written safeguarding and anti-harassment policies, to appoint a designated person to receive complaints, and to report annually to the local authority. These duties can be built on the Protection of Children from Sexual Offences Act 2012 and section 17 of the RTE Act.

D. Civil society and legal education

1. Legal aid authorities and law schools' clinics should include education-rights work in their programmes, and should assist families in using the grievance mechanisms under sections 31 and 32 of the RTE Act, which at present are little used.

XII. Conclusion

The constitutional position of girls' education has developed substantially since the Constitution placed the State's educational commitment within the Directive Principles. Article 21A now guarantees free and compulsory elementary education for children aged six to fourteen, while the Right of Children to Free and Compulsory Education Act 2009 establishes duties concerning admission, school facilities, attendance, and grievance redress. Equality jurisprudence and international human rights standards also support an interpretation that takes account of the conditions in which girls exercise this right.

The evidence considered in this paper nevertheless supports the argument advanced at the outset: the legal framework protects admission more clearly than continued participation. Article 21A's age limit, uneven enforcement, unsafe or inadequate facilities, early marriage, economic pressures, and the lack of systematic follow-up for girls who leave school all weaken

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the practical value of the entitlement. National enrolment figures can conceal substantial differences by State, social group, disability, and location; administrative data should therefore be read with attention to methodology and disaggregation.

An enabling-conditions approach would require public authorities to address barriers that materially prevent girls from attending and completing school, while grounding any such duty in the constitutional text, legislation, and established equality principles. The recommendations in this paper seek to make responsibility clearer through statutory duties, transparent data, accessible remedies, safer school environments, and coordinated support for girls at risk of leaving education. The effectiveness of these proposals would depend on adequate funding, reliable monitoring, and the participation of girls and their communities.

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