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A battle of rights: the right to education of children versus rights of minority schools

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ABSTRACT
The last decade and a half have witnessed radical changes in the right to education in India. In 2002, a constitutional amendment codified the right to education as a fundamental constitutional right. The Right of Children to Free and Compulsory Education Act 2009 (RTE Act) was subsequently enacted to provide a statutory framework for this right's realisation. These developments have, however, not been without controversy, particularly with respect to the RTE Act's application to linguistic and religious minority schools. In this article, we analyse the consequences of two Supreme Court judgments that exempted all minority schools from the purview of the Act. We argue that the minority exemption has diluted the core of the RTE Act, which was envisioned as a law guaranteeing the right and access to quality education to all children in India. We then make recommendations aimed at stemming the unwelcome consequences of these judgments.

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1. Introduction

Over the last decade and a half we have witnessed radical changes in the right to education in India. Education has moved from being a mere pious declaration under the Directive Principles of State Policy to being made justiciable within 10 years,[1] to being held to be a part of the fundamental right to life under Article 21 of the Constitution,[2] and finally to being declared a full-fledged fundamental right of its own under Article 21A.[3] The constitutional amendment introducing Article 21A led to the enactment of the Right of Children to Free and Compulsory Education Act 2009 (RTE Act),

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[1]Constitution of India 1950, art 45.

[2]*Mohini Jain v State of Karnataka* (1992) 3 SCC 666; *Unnikrishnan v State of Andhra Pradesh* (1993) 1 SCC 645.

[3]Constitution (86th Amendment) Act 2002.

which gave flesh and blood to the constitutional right to equal and quality education for all children between the ages of 6 and 14 years.

These developments have, however, not been without controversy, particularly with respect to the RTE Act's application to private schools. The Supreme Court in *Society for Unaided Private Schools of Rajasthan v Union of India* exempted unaided private minority schools—in other words, minority schools that receive no funding from the state—from complying with the RTE Act.[4] Two years later, in May 2014, the Supreme Court in *Pramati Educational and Cultural Trust v Union of India* extended this exemption to include even those minority schools that received grants from the state.[5] Together, these two judgments have exempted all private minority schools from the requirements of the RTE Act. This has had a number of unwelcome consequences and made the RTE Act the focus of intense litigation by private schools.

In this article, we explore the consequences of the minority school exemption from the RTE Act and, in particular, the ambiguous definition of what constitutes a minority institution, which has led to a large number of private schools clamouring for minority status. We argue that the minority exemption has diluted the core of the RTE Act, which was envisioned as a law guaranteeing the right and access to quality education to all children in India, whether studying in private or public schools. We argue that if the vision of universal access to quality education as envisaged under the RTE Act is to be realised, there is an urgent need to review the definition of what constitutes a minority institution. Further, minority schools should not be exempted from the norms and standards prescribed in the RTE Act, which contain some of the ingredients for a quality education.

This article consists of four parts. In Part B, we briefly describe the articulation of the right to education under the Indian Constitution, the key provisions of the RTE Act, the constitutional challenges to the RTE Act that were raised in the *Society* and *Pramati* cases, and the Supreme Court's rulings in these cases. Part C analyses the unwelcome consequences of the minority schools exemption to the RTE Act and the confusion it has generated over what constitutes a minority institution. In Part D, we argue for a need to review and rethink the definition of minority institutions in the context of the RTE Act. In Part E, we further argue that minority schools should be required to comply with the norms and standards of the RTE Act, because such compliance would not violate any rights of minority institutions. On the contrary, exempting minority schools from compliance with these norms and standards would seriously compromise the RTE Act's vision of providing equal access to quality education for all children.

[4](2012) 6 SCC 1.
[5](2014) 8 SCC 1.

2. The constitutional right to education, the RTE Act, and developments that followed

Education under the Indian Constitution was initially only a Directive Principle of State Policy and not a fundamental right. Article 45 of the Constitution originally stated:

> 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.

During the drafting of the Constitution, there were differing views among the members of the Constituent Assembly as to whether education should be made a fundamental right or left as a directive principle. Some members of the Constituent Assembly believed that the provision concerning education should be made mandatory from the beginning, while others were of the view that making education a fundamental right would not be practical due to financial constraints.

There were also differences among the members of the Constituent Assembly with respect to the rights of minorities to establish educational institutions. While some members of the Constituent Assembly considered these rights to be extremely pivotal and sacrosanct in the Constitution, other members believed that special rights should be given only to linguistic minorities and not to religious minorities. K. T. Shah supported the rights of minorities to establish educational institutions, but called for an amendment to ensure that minority institutions complied with the instructions mandated as a part of the national system of education.[6] These debates that occurred at the time of the Constitution's founding remain extremely relevant today in the light of the tensions that have arisen between the right to education of all children and the rights of minority communities to establish and run educational institutions.

The last decade and a half has seen significant legal developments in the right to school education at the national level. In 2002, the 86th constitutional amendment codified the right to education as a fundamental right through the introduction of Article 21A of the Indian Constitution.[7] Article 21A casts an obligation on the state to provide free and compulsory education to all children in the age group of 6–14 years. Simultaneously with Article 21A, a new fundamental duty was inserted in Article 51(k) requiring parents and guardians to provide their wards between 6 and 14 years with opportunities

[6]Constituent Assembly of India Deb 8 December 1948, vol VII <parliamentofindia.nic.in/ls/debates/vol7p22.htm> accessed 2 January 2017.

[7]Constitution (86th Amendment) Act 2002 (n 3), s 2, which inserts the following as art 21A:

> 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.

for education.[8] These constitutional amendments were brought about to fulfil the constitutional goal of universal and quality education.[9]

Though Article 21A was inserted into the Constitution in 2002, it was only in 2009 that the RTE Act was enacted to provide a statutory framework for the realisation of the right to quality elementary education. The RTE Act guarantees to every child between 6 and 14 years free and compulsory quality elementary education and obligates the state to satisfy that right. The Act regulates schools and provides for norms and standards that all schools are required to offer as the inputs for a quality education.[10] These include requirements on student–teacher ratio, libraries, toilets, midday meals, playgrounds, and drinking water. The RTE Act also prohibits corporal punishment, does not allow children to be held back in a class until the completion of elementary education in the eighth grade, and prohibits any sort of screening procedure for admissions. Further, the Act requires teachers and schools to adopt child-centric approaches to learning in a trauma-free context and to conduct continuous and comprehensive evaluation of the child.[11]

One of the most discussed and controversial provisions of the RTE Act has been section 12(1)(c). This provision mandates that unaided private schools must fill 25% of their student strength in class I with children from weaker and disadvantaged sections of society, free of charge.[12] The schools would be reimbursed by the government at a fixed per-child amount determined by each state government.[13] It was up to the different states to provide definitions as to what constitutes weaker and disadvantaged sections of society, and most of these definitions include income criteria so as to ensure that children from poor backgrounds, scheduled castes, scheduled tribes, migrant families, single mothers, and other disadvantaged sections of society are afforded a place in private schools free of charge. The core reason for this provision in the RTE Act was to foster diversity in schools and to eliminate segregation and discrimination.[14]

The constitutionality of the RTE Act was first challenged by a number of private unaided schools in the Supreme Court. The crux of the challenge was section 12(1)(c), which they claimed imposed an unreasonable

[8]Constitution (86th Amendment) Act 2002 (n 3), s 4, following which art 51A provides:
> It shall be the duty of every citizen of India … (k) who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.

[9]Constitution (86th Amendment) Act 2002 (n 3), Statement of Objects and Reasons.
[10]Right of Children to Free and Compulsory Education Act 2009 (RTE Act), s 28.
[11]ibid, s 29.
[12]ibid, s 12(1)(c):
> [A school] specified in sub-clauses (iii) and (iv) of clause (n) of section 2 shall admit in class I, to the extent of at least twenty-five per cent of the strength of that class, children belonging to weaker section and disadvantaged group in the neighbourhood and provide free and compulsory elementary education till its completion.

[13]ibid, s 12(2).
[14]Constitution (86th Amendment) Act 2002 (n 3), Statement of Objects and Reasons.

restriction on their freedom to practice any occupation under Article 19 (1)(g) of the Constitution. They argued that the obligation to fill 25% of class I from disadvantaged children interfered with their freedom to run their school, and that they were being deprived of fees. They further argued that the state was trying to impose its burden of providing free and compulsory education on private schools. Minority unaided schools also claimed that the section violated their special fundamental rights under Articles 29 and 30 of the Constitution to establish and run minority educational institutions.

These petitions led to the landmark judgment in *Society for Unaided Private Schools of Rajasthan v Union of India* in which the Supreme Court in April 2012 upheld the constitutionality of the RTE Act, but with a significant exception.[15] The Court held that the Act did not apply to religious and linguistic minority schools that did not get any aid from the state, as the requirement to admit 25% of their student strength from children from disadvantaged groups interfered with their right to establish and administer their own educational institutions under Articles 29 and 30 of the Constitution.[16] The *Society* judgment, while it upheld the constitutional validity of the RTE Act and the principle of horizontal application of social rights to the private sector, was a huge setback as it excluded private unaided minority schools from the Act's coverage.

In a second challenge to the RTE Act, private schools once again challenged the Act's constitutionality in the Supreme Court on the ground that the Act violated the basic structure of the Constitution and also made an unjustified classification between minority and non-minority private schools in violation of the right to equality. Two years after the *Society* judgment, the Supreme Court in *Pramati Educational and Cultural Trust v Union of India* once again upheld the constitutionality of the RTE Act.[17] This time, however, the Court went further than *Society* in carving out yet another exception to the Act's application. The Court held that both aided and unaided minority schools were excluded from the purview of the RTE Act as the rights under Articles 29 and 30 of the Constitution applied to all religious and linguistic minority educational institutions.

The Court's rationale for excluding minority educational institutions from the purview of the RTE Act was that the Constitution gives religious and linguistic minorities the fundamental right to establish and administer their own educational institutions, subject only to minimal regulation by the state. Requiring minority schools to admit a certain percentage of their students from a specified group was seen as interfering with this fundamental

[15] *Society* (n 4).
[16] These articles are set out below, in Part C, section 2.
[17] *Pramati* (n 5).

right as it had the potential to undermine the minority character of these institutions.

The Supreme Court's judgments in the *Society* and *Pramati* cases are perhaps a reflection of the historical tendency of the Court to give a liberal interpretation of the rights of minority educational institutions under Articles 29 and 30 of the Constitution.[18] In the words of Khanna J, 'A liberal, generous and sympathetic approach is reflected in the Constitution in the matter of the preservation of the right of minorities so far as their educational institutions are concerned'.[19] Such a liberal approach was taken as the Court held that special protection to the minority institutions is needed so that these communities do not feel alienated.[20] However, while these intentions may be laudable, the Court's liberal interpretation of the rights of minority schools in the context of the RTE Act has led to a significant dilution of the right to education for all children. In particular, without further guidelines and clarity on what constitutes a minority school and the extent to which minority schools are to be exempt from the RTE Act, the two judgments taken together have resulted in the exemptions to the Act looming larger than the Act itself and have had a host of unwelcome consequences.

3. The unwelcome consequences of the minority exemption

3.1. The clamour for minority status

Following the *Society* and *Pramati* judgments, all minority schools, both aided and unaided, were exempted from the coverage of the RTE Act. The *Pramati* judgment received huge criticism from civil society groups for diluting the applicability of the RTE Act.[21] A significant result of this dilution has been that more and more private schools are clamouring for minority status, and proposing to be religious and linguistic minority schools so that they can be exempt from the Act's coverage. In October 2014, for example, a few months after the *Pramati* judgment, the Maharashtra State Child Rights Commission made a startling observation that nearly 80% of private schools in the state had acquired minority status.[22] In Karnataka, there are presently 969

[18] *Islamic Academy of Education v State of Karnataka* (2003) 6 SCC 697; *PA Inamdar v State of Maharashtra* (2005) 6 SCC 537.

[19] *Ahmedabad St Xavier's College Society v State of Gujarat* (1974) 1 SCC 717 [89].

[20] ibid.

[21] See, for example, Alok Prasanna Kumar, 'Right to Education: Neither Free nor Compulsory' (*The Hindu*, 9 May 2014) <www.thehindu.com/todays-paper/tp-opinion/right-to-education-neither-free-nor-compulsory/article5991271.ece> accessed 29 November 2015; Anurag Behar, 'Two Judgments in Education' (*Mint*, 14 May 2014) <www.livemint.com/Opinion/VLnX9Vhloiq93vRnNkOL6L/Two-judgments-in-education.html> accessed 29 November 2015.

[22] Vinamrata Borwankar, 'Maharashtra Child Rights Commission Seeks to Cancel Exemption for Minority Schools' (*The Times of India*, 16 October 2014) <http://timesofindia.indiatimes.com/city/mumbai/Maharashtra-child-rights-commission-seeks-to-cancel-quota-exemption-for-minority-schools/articleshow/44842255.cms> accessed 7 October 2016.

aided and unaided private schools that have been given minority status on linguistic grounds[23] and many more are in the pipeline claiming to be minorities.[24] Private schools all over the country have been involved in seeking exemptions from compliance under the RTE Act on the basis of their self-proclaimed minority status.

The *Pramati* judgment also opened up a Pandora's box of litigation by private schools—all in a bid to ensure that they do not have to comply with the provisions of a law designed to provide universal and quality education for children. In *Ashith Karthik Rao v State of Karnataka*, the Karnataka High Court considered a petition filed by around 50 first-grade children, challenging the refusal by five private schools to give them admission under section 12(1)(c) of the RTE Act on the ground that they were minority schools.[25] In allowing the petitioners' challenge, the High Court held that the *Society* and *Pramati* judgments did not allow 'self-serving' assertions of minority status.[26] A school cannot claim to be a minority institution or deny admissions to children from disadvantaged groups, the judgment suggests, unless it has obtained a certificate of minority status from the competent authority.[27] The High Court also directed the schools to admit the children immediately and even pay for their additional classes for the days that they had missed.[28] The schools soon appealed to the Supreme Court, which granted a stay of the High Court order.[29] Such cases illustrate that schools have attempted to change their status to take advantage of the exemption granted by the Supreme Court in *Society* and *Pramati*.

This clamour for minority status, and the ensuing litigation to which *Society* and *Pramati* have led, are at least in part a reflection of there being no clear or uniform definition of what constitutes a minority school. In the following subsection, we look into case law on the Supreme Court's guidelines for defining a minority educational institution. In the subsection after that, we look into the implications that these guidelines have had for minority schools and the kind of criteria that have been laid down by states on what constitutes a minority school.

[23]Department for Public Instructions, Karnataka, 'Minority Primary Schools, Teachers and Pupils Statistics' <www.schooleducation.kar.nic.in/minoedn/MinStatistics/SchTrsPupStat.pdf> accessed 21 March 2016.
[24]Mridula Chari, 'Why Bangalore Schools are Rushing for Minority Certificates' (*Scroll.in*, 19 May 2014) <scroll.in/article/664538/why-bangalore-schools-are-rushing-for-minority-certificates> accessed 11 January 2017.
[25]2014 SCC Online Kar 10090.
[26]ibid [36].
[27]ibid [39]–[40].
[28]ibid [47]–[48].
[29]*VIBGYOR School, NS Palya v State of Karnataka* Civil Appeal No 10292/2014. At the time of writing the appeal is still pending.

3.2. What is a minority institution?

Articles 29 and 30 of the Constitution provide for certain fundamental rights to linguistic and religious minorities:

> **29. Protection of interests of minorities**
>
> (1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.
>
> (2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.
>
> **30. Right of minorities to establish and administer educational institutions**
>
> (1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.
>
> (1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.
>
> (2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

As is clear from the above, while the Constitution guarantees fundamental rights to minority educational institutions, it does not provide any guidance on what constitutes a religious or linguistic minority institution.

The Supreme Court has also steered clear of a precise definition, but has, in a series of cases over the years, provided some guidelines on the characteristics that an institution must possess in order to claim minority status. The Supreme Court's judgments with respect to defining a minority institution refer broadly to three main criteria:

> 1 Whether a particular group is a minority needs to be decided separately in each state, based on that state's demographics.
>
> 2 The institution needs to have been established and managed by the minority community.
>
> 3 A significant proportion of the school's student body should be comprised of students from that minority community.

3.2.1. Minority definition to be state-wise

An interesting finding given by the Supreme Court on the definition of religious and linguistic minorities is that a community should be determined to be a

minority not based on their percentage nationally, but state-wise. In *TMA Pai v State of Karnataka*, an eleven-judge bench of the Supreme Court reasoned that a minority, whether linguistic or religious, is determinable only by reference to the demographics of the state in question and not by taking into consideration the population of the country as a whole.[30] Thus, while Hinduism may be a majority religion for most parts of the country, there could be some states in which Hindus constitute a minority. The application of the numerical test with reference to religion in states like Punjab, Jammu and Kashmir, and Nagaland makes Sikhism, Islam, and Christianity the majority religions in those states respectively.[31] Similar reasoning applies to linguistic minorities. Thus, Tamil-speaking people would constitute a linguistic minority in the state of Karnataka but not in the state of Tamil Nadu.

The implication of the *TMA Pai* judgment for the application of the RTE Act is that, although the Act is national legislation that applies across the whole country, the minority communities would be determined at the state level based on the composition of the state's population. As a result, different states have come up with different criteria on what constitutes a minority school for the purpose of the RTE Act. As can be expected, the criteria vary significantly from state to state. This is particularly the case with respect to student composition, which is discussed in detail below.

3.2.2. Established and administered by the minority community

Article 30(1) of the Constitution gives 'all minorities, whether by religion or language, the right to establish and administer educational institutions of their choice'. It is, therefore, intuitive that one of the criteria for an institution to be a minority educational institution is that it needs to be established and administered by a minority community. In *S Azeez Basha v Union of India*, a Constitutional Bench of the Supreme Court held that the expression 'establish and administer' used in Article 30(1) of the Constitution was to be read conjunctively—that the institution should be established by a minority community and that its administration was also vested in that community.[32] Similarly, in *St Stephen's College v University of Delhi*, the Court pointed out that the onus lay on the minority community to produce satisfactory evidence that the institution in question was indeed established by the minority community claiming to administer it.[33]

[30](2002) 8 SCC 481 [170].

[31]Compare *DAV College v State of Punjab* (1971) 2 SCC 269.

[32]AIR 1968 SC 662 [21], [33]. Along similar lines, in *SP Mittal v Union of India* (1983) 1 SCC 51 [138], [143] the Supreme Court held that in order to claim the benefit of Article 30(1), the community must show that: (a) it is a religious or linguistic minority, and (b) the institution was established by it. Without specifying these two conditions, a community could not claim the guaranteed rights to administer the institution.

[33](1992) 1 SCC 558. This principle was reiterated by the Division Bench of the Madras High Court in *TKVTSS Medical, Educational and Charitable Trust v State of Tamil Nadu* AIR 2002 Mad 42 [12], where the Court said that 'once it is established that the institution has been established by a linguistic minority, and is

More importantly, it is not enough that the institution was merely established or set up by a minority community, but that it was established for the 'benefit' of the minority community. In *Andhra Pradesh Christians Medical Educational Society v Government of Andhra Pradesh*, the Supreme Court held that the government, the university and ultimately the Court may go behind the claim that the institution in question is a minority institution and 'to investigate and satisfy itself whether the claim is well-founded or ill-founded'.[34] The Court pointed out:

> The object of Article 30(1) is not to allow bogies to be raised by pretenders but to give minorities 'a sense of security and a feeling of confidence' … to establish and administer educational institutions of their choice. These institutions must be educational institutions of the minorities in truth and reality and not mere masked phantoms.[35]

While the Court held that there could be many different goals of minority institutions, it held importantly that 'there must exist some real positive index to enable the institution to be identified as an educational institution of the minorities'.[36]

3.2.3. Student body

The final criterion that the Supreme Court has discussed is that a significant portion of the student body must be comprised of students from that minority community. This has led to much controversy, as it leads to the inevitable question of what proportion is appropriate.

In *Re the Kerala Education Bill*, the Supreme Court held that a minority educational institution may admit a 'sprinkling' of students from non-minority communities without losing its minority character.[37] This concept was further clarified in *PA Inamdar v State of Maharashtra*, which perhaps provides the most detailed reasoning on the subject.[38] There the Supreme Court held:

> Minority institutions are free to admit students of their own choice including students of [a] non-minority community as also members of their own community from other States, both to a limited extent only and not in a manner and to

administered by that minority, that would be sufficient for claiming the fundamental right guaranteed under Article 30(1) of the Constitution'.

[34](1986) 2 SCC 667 [8].

[35]ibid.

[36]ibid. The same position had been adopted in *State of Kerala v Very Reverend Mother Provincial* (1970) 2 SCC 417 [8]. In this case, the Supreme Court clarified that the members of the minority community that may establish a minority institution may be a society or trust consisting of members of the minority community or even a single member of the minority community. What was important, the Court stated, was that 'the intention in either case must be to found an institution for the benefit of a minority community by a member of that community'.

[37]AIR 1958 SC 956 [22].

[38]*PA Inamdar* (n 18).

> such an extent that their minority educational status is lost. If they do so, they lose the protection of Article 30(1).[39]

The crux of the reasoning in *PA Inamdar* is that the minority educational institution is one that is primarily for the benefit of the minority community. In other words, any 'sprinkling' of students from non-minority communities in the student population of a minority educational institution is expected to be only peripheral, either for generating additional financial resources or for providing admission to other students in the locality. However, a substantive section of the student population in a minority educational institution should belong to the minority.

While the Supreme Court has emphasised that minority educational institutions may accept a small number of students from non-minority communities, it has not prescribed what this percentage should be, reasoning that this may vary depending on the circumstances. In *TMA Pai,* the Court observed:

> The situation would vary according to the type of institution and the nature of education that is being imparted in the institution. Usually, at the school level, although it may be possible to fill up all the seats with the students of the minority group, at the higher level, either in colleges or in technical institutions, it may not be possible to fill up all the seats with the students of the minority group.[40]

The Court in *TMA Pai* went on to say:

> It will be more appropriate that, depending upon the level of the institution, whether it be a primary or secondary or high school or a college, professional or otherwise, and on the population and education needs of the area in which the institution is to be located, the State properly balances the interests of all by providing for such percentage of students of the minority community

[39] ibid [132].

[40] *TMA Pai* (n 30) [149]. At [153], the Supreme Court also pointed out that an institution established for a community that was a linguistic minority in a particular state should predominantly serve the members of the linguistic community from that state, rather than from other states where the community may not be a minority:

> [S]uch an institution is under an obligation to admit the bulk of the students fitting into the description of the minority community. Therefore, the students of that group residing in the state in which the institution is located have to be necessarily admitted in a large measure because they constitute the linguistic minority group as far as that state is concerned. In other words, the predominance of linguistic students hailing from the state in which the minority educational institution is established should be present. The management bodies of such institution cannot resort to the device of admitting the linguistic students of the adjoining state in which they are in a majority, under the facade of the protection given under Article 30(1).

This was reiterated in *PA Inamdar* (n 18) [101], where the Court held:

> The same principle applies to [a] religious minority. If any other view was to be taken, the very objective of conferring the preferential right of admission by harmoniously constructing Articles 30(1) and 29(2), may be distorted.

to be admitted, so as to adequately serve the interest of the community for which the institution was established.[41]

3.3. The Supreme Court guidelines and their implications for minority schools

The broad principles laid down by the Supreme Court in the cases discussed above have given states significant latitude in interpreting the criteria for a minority school. Further, it is worth noting that all of these cases related to institutions of higher education, especially institutions of technical education, and did not involve elementary schools or any exemption from compliance with legislation central to ensuring quality elementary education. Nowhere does the Supreme Court specifically define what constitutes a minority school, though it alludes to what some of these features might be and provides guidelines. It is this allusion and vague guidelines that courts and governments are left grappling with, in order to come up with suitable definitions as to what would constitute a minority school for the purposes of the exemption under the RTE Act.

Based on the Supreme Court's guidelines as well as other criteria, states have come up with vastly different definitions of what constitutes a minority school. Some states such as Andhra Pradesh,[42] Haryana,[43] and Karnataka have criteria based on both management composition and student strength, though the minimum proportion of students from the minority community varies from 70% in Andhra Pradesh to 25% in Karnataka. In Karnataka, the percentage was actually reduced from 75% in 2012 to just 25% in 2014.[44] Other states such as Rajasthan do not have any requirement on student strength while the West Bengal criteria simply state that 'as many seats as possible' shall be filled by students from the eligible minority community.[45]

Private schools have also taken advantage of the confusion over the process for obtaining minority status, as well as over who is the competent authority to provide them with a minority certificate. When the state government in Karnataka issued a notification laying down the criteria for getting recognition as a minority school, an umbrella organisation of about 1,000

[41] *TMA Pai* (n 30) [151].

[42] Department of Minorities Welfare, Andhra Pradesh, 'Certain Guidelines for Issuing Minority Status Certificate for Making Admissions and Appointments etc. in Minority Educational Institutions' (GO 2004, 1) <www.aponline.gov.in/Quick%20Links/Departments/Minorities%20Welfare/Govt-Gos-Acts/2004/GO.Ms.1.2004.html> accessed 6 November 2015.

[43] Director of Secondary Education, Haryana, 'Policy Guidelines for Grant of NOC to Minority Educational Institutions in Haryana' <schooleducationharyana.gov.in/downloads_pdf/Circullers/NoticePS_14082015.PDF> accessed 6 November 2015.

[44] Higher Education Department, Karnataka, Order 2014 (GO 2014, 1216).

[45] Minority Affairs and Madrasah Education Department, West Bengal, 'Guidelines for Recognition of Educational Institution as Minority Educational Institution in West Bengal' (GO 2008, 942-MD) <www.wbpublibnet.gov.in/form-details/Minorities_Affairs_and_Madrasah_Education-forms/Form%20Of%20Application%20For%20Minority%20Status%20Certificate.pdf> accessed 6 November 2015.

schools that were claiming to be religious minorities successfully challenged the government's requirement that they needed to get new minority certificates from the competent authority. The High Court ruled that these schools did not need to obtain new certificates even though the criteria for being certified as a minority institution had changed.[46]

The varied and inconsistent interpretations of the criteria for minority schools have significant implications. As one of the main consequences of being declared a minority school is the exemption from the RTE Act, having vague guidelines inevitably leads to a dilution of the Act. In Part D, we discuss the need to urgently revisit the guidelines for what constitutes a minority school in the context of the RTE Act. We then go on in Part E to discuss yet another measure to stem the unwelcome dilution of the Act in the aftermath of the *Pramati* judgment: making certain of its provisions, such as the norms and standards for a quality education, applicable to all schools, including minority schools.

4. The need for clearer criteria for minority schools

In the *Society* and *Pramati* cases, the Supreme Court considered a conflict between two different rights—the right of children to free and compulsory education, on the one hand, and the rights of minority educational institutions, on the other. In doing so, rather than trying to harmoniously balance the two competing rights, the Court gave priority to the rights of minority educational institutions. The Court in *Pramati* ruled that the RTE Act and section 12(1)(c) in particular could not be applicable to minority schools because 'members of communities other than the minority community which has established the school cannot be forced upon a minority institution as that may destroy the minority character of the school'.[47]

The *Society* and *Pramati* judgments were flawed in holding that the RTE Act violated the rights of minority educational institutions under Articles 29 and 30 of the Constitution. Prior judgments of the Supreme Court have shown that states can regulate minority educational institutions, and that subjecting such institutions to regulation does not infringe their rights under Article 30.[48] Further, as judgments such as *TMA Pai* have shown, in the case of aided minority institutions the state can even require a certain percentage of students to be admitted from the non-minority community, which makes the Court's rulings in *Society* and *Pramati* inconsistent with previous jurisprudence on this issue.

[46]Shyam Prasad, '1,000 Minority Schools Get Certificate Waiver' (*Bangalore Mirror*, 14 May 2015) <www.bangaloremirror.com/bangalore/others/1000-minority-schools-get-certificate-waiver/articleshow/47271588.cms> accessed 27 January 2016.

[47]*Pramati* (n 5) [46].

[48]See for example, *PA Inamdar* (n 18) [121], which held that minority institutions could be subject to regulation by the state consistent with the requirements of 'ensuring merit, excellence of education and preventing maladministration'.

The argument that taking in students from disadvantaged communities as required by section 12(1)(c) of the RTE Act would destroy the minority character of institutions becomes even more untenable when one looks at the aftermath of the *Pramati* judgment. Many schools sought the status of, or proclaimed themselves to be, minority schools even though a majority of their students were not from the minority community in question. In fact, Karnataka has reduced the required percentage of students from a minority community from 75% to 25%. If, as these schools themselves state, they cannot in any event get a large proportion of children from the minority community, it is unclear why filling 25% of their student strength with children from economically weaker sections (EWS) backgrounds would destroy the minority character of these institutions.

Previously, being a certified minority educational institution may have allowed an institution to receive aid from either the government or from associated minority institutions (such as religious institutions) or entitled it to grant admission preferentially to members of the community for whose protection and advancement the institution was established. In contrast, after *Society* and *Pramati*, the consequence of being a minority school is to be exempt from a law that provides a statutory framework for realising the fundamental right to education. Given the widespread repercussions this exemption has had for the implementation of the fundamental right to education, it is of critical importance that the definition of a minority school is clear and narrow to ensure that schools do not proclaim to be minority schools purely to escape the provisions of the RTE Act.

What should these criteria for a minority school be? As discussed in Part C, the Supreme Court in its decisions pertaining to institutions of higher education has proclaimed that whether a particular community is a minority community warranting protection under Articles 29 and 30 of the Constitution should be determined state-wise. The Court further provided that an institution needs to be both established and administered by the minority community in question and that it should primarily cater to the needs of students from that minority community. This meant that while there could be a 'sprinkling' of students from non-minority communities, a large proportion of the students should be from the minority community. While these guidelines provide a useful starting point, as we have seen, they have been interpreted by states in very different ways, to the detriment of the implementation of the RTE Act. Further, the cases decided by the Supreme Court all pertain to higher education and there may be several reasons to apply slightly different criteria to minority schools.

First, student composition appears to be the most misinterpreted prong of the test. Some states have even done away altogether with the requirement for a minimum percentage of students to be from the minority community, while others have lowered the threshold. This is inconsistent with Supreme Court guidance, which, as mentioned, allows only a 'sprinkling' of students from the non-minority community in a minority institution. However, since

the Court has also said that what constitutes a reasonable number depends on the circumstances, states have adopted a liberal interpretation of the student composition requirement. One argument that has been advanced for not requiring a student composition test, or requiring only a very small percentage of students to be from the minority community in question, is that the minority community may constitute a very small proportion of the population of the state.

However, drawing a correlation between the percentage of a minority population in an area and the ability of a school to meet the requirement of enrolling a minimum percentage (say 50%) of minority students in the school involves a logical leap of faith. While any minority community's population, by definition, will be less than 50% in the particular area, this does not translate to a lack of students to meet the state government's requirement in absolute numbers. Even prior to student composition becoming a focus following the *Pramati* judgment, numerous institutions run by members of Christian minority communities had at least half of their student body belonging to the Christian community. This has been the case despite the fact that Christians constitute less than 5% of the population in most states. On the other hand, lowering the requirement to below 50%, or not having any requirement at all, leads to the risk of schools claiming to be minority schools even though they do not cater to the needs or advancement of the community for whose benefit they claim to be established.

The other prong of the test for a minority institution is that the institution needs to have been both established and administered by members (or a member) of the minority community. This prong has not caused as much controversy as the student composition prong, as most schools that seek minority status have been able to demonstrate that they were established and are managed by the minority community. However, we believe that the 'established and administered' prong alone should be insufficient to meet this part of the test without evidence of some nexus between the school and the interests of the minority community for whose benefit the school has been established. The requirement for such a nexus has been confirmed by various Supreme Court judgments. In *Andhra Pradesh Christians Medical Educational Society*, the Court spoke of the need for a 'real positive index' that made it clear that the institution in question was for the benefit of the minority community.[49] This sentiment was echoed in *PA Inamdar*, where again the Court pointed out that it must always be remembered the primary purpose of the minority institution is the benefit and protection of the minority community in question.[50]

The reason that this correlation needs to be incorporated into guidelines defining a minority school is that the *Pramati* decision has led to several

[49](n 34) [8].
[50]*PA Inamdar* (n 18) [99]–[102].

schools claiming to be minority schools even though there appears to be no correlation between the school and the community that it purports to benefit. This has particularly been the case with various schools that have tried to get themselves declared as schools catering to linguistic minorities in the state. Many of these are elite private schools established by a trustee or management who just happen to be from a linguistic minority community. However, apart from the identity of the management, the school itself does not have any nexus with the language or culture of the linguistic minority community, and often these schools do not even teach the language of the linguistic minority community whose interests they seek to advance.[51] Such self-serving declarations of minority status would be curtailed if schools were required to establish a correlation between the school's teaching and some benefit for the community in question.

The lack of a clear definition of what constitutes a minority school has led to significant abuse of the RTE Act's exemption for minority schools. It has also blurred the distinction between schools that have genuinely been established to serve the interests of a particular minority community and have done so since their establishment, and schools that have recently sought to be classified as minority institutions in the aftermath of the *Society* and *Pramati* judgments. Thus, we need clear guidelines and criteria on what constitutes a minority school. As discussed above and in the light of the abuse by private schools that we have seen, such guidelines must necessarily include a minimum percentage of students from the minority community in question as well as some account of how the school aims to protect and benefit the interests of the minority community for whom it has been established.

5. Norms and standards

A much overlooked fact of the *Society* and *Pramati* judgments is that they have drawn disproportionate attention to section 12(1)(c) at the expense of other provisions of the RTE Act. The Act contains a large number of provisions that are unrelated to private schools reserving a percentage of their places for EWS students. These provisions are intended to apply to all schools, both public and private. The Schedule to the RTE Act contains norms and standards that are applicable to all schools, including requirements on student–teacher ratios, libraries, separate toilets for boys and girls, midday meals, playgrounds, and clean drinking water.[52] The RTE Act also prohibits corporal punishment,[53] does not allow for children to be held back in a class until the completion of

[51]'Schools Face the Heat for Flouting Norms' (*The Times of India*, 7 October 2015) <timesofindia.indiatimes.com/city/pune/schools-face-the-heat-for-flouting-norms/articleshow/49250300.cms> accessed 11 January 2017.
[52]RTE Act (n 10), s 19 and Schedule.
[53]ibid, s 17.

elementary education in the eighth grade,[54] and prohibits any sort of screening procedure for admissions.[55] Further, the Act requires teachers and schools to adopt child-centric approaches to learning in a trauma-free context and to conduct continuous and comprehensive evaluation of the child.[56] One of the glaring errors made by the Supreme Court in both the *Society* and *Pramati* judgments was that their language (which we discuss below) leaves ambiguity over whether the Court intended minority institutions to be exempted from all provisions of the RTE Act or only from section 12(1)(c).

In this Part, we argue that there is a strong case for reading down *Society* and *Pramati* as exempting minority schools only from section 12(1)(c) and not from the other provisions of the RTE Act. Even if, for argument's sake, we accept that section 12(1)(c) may destroy the minority character of an institution, it is entirely unclear how the other provisions of the Act would destroy the minority character of a school or infringe upon the rights of a minority institution under Article 30 of the Constitution. On the contrary, we argue that if the state is to fulfil its mandate of ensuring that all children, including children studying in minority schools, obtain a quality education, it is essential that minority schools are required to comply with these other provisions of the RTE Act. In particular, we believe it is critical to ensure that all schools, including minority schools, comply with the Act's norms and standards.

5.1. The Society *and* Pramati *judgments and the application of norms and standards to minority schools*

What do the *Society* and *Pramati* judgments say on the application of the other provisions of the RTE Act (excluding section 12(1)(c)) to minority schools? In *Society*, the Supreme Court discusses the Act in great detail, but focuses almost entirely on the 25% reservation requirement in section 12(1)(c) when discussing the Act's applicability to unaided minority schools. However, its conclusion suggests that unaided minority schools are to be exempt from the entire Act:

> Reservations of 25% in such unaided minority schools result in changing the character of the schools if right to establish and administer such schools flows from the right to conserve the language, script or culture, which right is conferred on such unaided minority schools. *Thus, the 2009 Act including section 12(1)(c) violates the right conferred on such unaided minority schools under Article 30(1).*[57]

A similar inconsistency is seen in the *Pramati* judgment. The Supreme Court discusses the fundamental right to education under Article 21A of the

[54] ibid, s 16.
[55] ibid, s 13.
[56] ibid, s 29.
[57] *Society* (n 4) [19] (emphasis added).

Constitution and the fact that the RTE Act was the law enacted by the state for the purpose of realising its obligation to provide free and compulsory education to all children between the ages of 6 and 14 years. The Court also goes on to discuss section 12(1)(c) and how a minority school cannot be forced to take on students from the non-minority community. However, apart from section 12(1)(c) and the related definitional reference to section 2(n)(iii), the *Pramati* judgment does not discuss or even refer to any other substantive provision of the Act. Yet, in its conclusion, it holds that the RTE Act 'insofar as it applies to minority schools, aided or unaided, covered under clause (1) of Article 30 of the Constitution is ultra vires the Constitution'.[58]

Therefore, while the focus of the Court was on holding that the requirement of compulsory admission of disadvantaged students is in violation of the right of minority educational institutions under Article 30(1) of the Constitution to admit students of their choice, it concluded that the RTE Act as a whole is inapplicable to minority schools, which was a great mistake on the part of the Court.

Given that the focus of the Supreme Court was exclusively on section 12 (1)(c) of the RTE Act, we believe it is possible to read down the *Society* and *Pramati* judgments as exempting minority schools only from the 25% reservation requirement rather than from the entire scope of the Act. This view that all schools, including minority schools, must comply with the basic norms and standards of the RTE Act has already been articulated by the Supreme Court in a little-known judgment that was sandwiched between *Society* and *Pramati*.

Environmental and Consumer Protection Foundation v Delhi Administration arose out of a public interest petition filed by an NGO for implementation of basic facilities in all schools.[59] This petition was filed prior to the enactment of the RTE Act and in reliance on Article 21A of the Constitution, but as the RTE Act was enacted during the course of this litigation the Supreme Court called upon all state governments to file affidavits on the compliance of schools in their respective states with the Act's norms and standards. After issuing a few interim orders directing states to ensure implementation of the norms and standards, the Supreme Court disposed of the petition, directing all states to implement them within a six-month period.[60] This judgment in particular focused on the provision of usable toilets in schools and separate toilets for boys and girls, making the observation that the lack of functioning toilets was often a reason for girls dropping out of school upon attaining puberty.[61] A contempt petition was subsequently initiated against the state of Andhra Pradesh for the failure to establish adequate toilets and water

[58] *Pramati* (n 5) [47].
[59] (2012) 10 SCC 197.
[60] ibid [9].
[61] ibid [5], quoting the Court's earlier judgment in the same matter.

facilities in schools, as a consequence of which the Court again issued a similar interim order in January 2015.[62] The Supreme Court's orders made 'clear that these directions are applicable to all the schools, whether state-owned or privately-owned, aided or unaided, minority or non-minority'.[63]

This judgment has largely been ignored by policy makers, the media and right to education activists, but it could be very useful in lending support to the argument that minority schools must also comply with the norms and standards of the RTE Act, notwithstanding the *Pramati* judgment. Indeed, in *Azim Premji Foundation v State of Karnataka*, a judgment delivered in June 2015, the High Court of Karnataka relied on the *Environmental and Consumer Protection Foundation* judgment to direct all schools in the state, including minority schools, to comply with the norms and standards and provide toilets and other basic amenities for students.[64] Following this, in a recent decision of the Kerala High Court, *Sobha George Adolfus v State of Kerala*, a challenge arose to the action of a minority school in detaining a child in the sixth grade and not promoting him, which was argued to be a violation of section 16 of the RTE Act.[65] The minority school claimed that it was exempt from coverage under the Act. The Kerala High Court, in an interesting decision, held that 'denial of promotion up to elementary school level in minority schools … would amount to [a] denial of fundamental rights of the child, as it would have a direct bearing on the right to life of the child guaranteed under Article 21 of the Constitution'.[66] The Court thus concluded that 'protection under Article 30(1) is not available to a minority educational institution to hold back any child in any class up to elementary education'.[67]

Environmental and Consumer Protection Foundation and the other recent judgments discussed above provide support for the position that the *Society* and *Pramati* judgments did not provide minority schools with a blanket exemption from all provisions of the RTE Act. In the subsection that follows, we argue that this interpretation is consistent with prior judgments of the Supreme Court as well as with international covenants, which support the premise that all educational institutions can and must be subject to regulation. We further argue for the importance of norms and standards for achieving quality education and the critical need for all schools to comply with the norms and standards of the RTE Act if it is to achieve its vision of providing quality education for all children.

[62] *JK Raju v State of Andhra Pradesh* (2015) 12 SCC 99.
[63] *Environmental and Consumer Protection Foundation* (n 59) [9].
[64] 2015 SCC Online Kar 6409.
[65] 2016 SCC Online Ker 18552.
[66] ibid [31].
[67] ibid [35].

5.2. The need for regulation and the importance of norms and standards

The right of minority communities to 'establish and administer educational institutions of their choice' under Article 30 of the Constitution does not mean that the state cannot regulate these institutions. The Supreme Court has confirmed that regulating minority institutions does not interfere with minority communities' rights to establish and administer educational institutions of their choice. In *All Bihar Christian Schools Association v State of Bihar*,[68] the Court made this very clear when it said:

> [T]he State has [the] right to provide regulatory provisions for ensuring educational excellence, conditions of employment of teachers, ensuring health, hygiene and discipline and allied matters. Such regulatory provisions do not interfere with the minorities' fundamental right of administering their educational institutions; instead they seek to ensure that such institution is administered efficiently, and that students who come out of minority institutions after completion of their studies are well equipped with knowledge and training so as to stand at par in their avocation in life without any handicap. If regulatory provisions indirectly impinge upon minorities' right of administration of their institution, it would not amount to interference with the fundamental freedom of the minorities as the regulatory provisions are in the interest of the minority institutions themselves.[69]

Judgments such as this show that ultimately the right of minority communities under Article 30 has to be seen in the context of the larger goal of ensuring that students from minority communities receive a quality education. Seen from this perspective, the state's regulation of such institutions may be deemed not just permissible, but also necessary to ensure that all children obtain an education at institutions where certain quality standards are maintained.

The concept that all educational institutions, including private institutions, must be subject to regulation has also been set out in international treaties and covenants. The International Covenant on Economic, Social and Cultural Rights, one of the main human rights documents protecting the right to education under international human rights law, provides that while private educational institutions, including those catering to the needs and interests of minority communities, must be allowed to exist, these institutions need to be subject to any regulations enacted by the state to ensure that they conform to certain minimum standards.[70]

The types of infrastructure and related criteria that the RTE Act requires all schools to comply with have been recognised under international human

[68](1988) 1 SCC 206.
[69]ibid [9].
[70]International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR), arts 13(3) and 13(4).

rights law and international reports on education as being essential for ensuring a quality education. For example, a 2012 report issued by the United Nations Special Rapporteur on the Right to Education mentions well-qualified and motivated teachers and low student–teacher ratios as being important ingredients of quality.[71] Further, the Report points out that quality education cannot be successfully imparted without adequate infrastructure and facilities and a school environment in which teachers, parents and communities are all active participants in a school.[72] Similarly, the General Comment on the right to education in the ICESCR states that, while the functioning of educational institutions depends on numerous factors, 'all institutions and programmes are likely to require buildings or other protection from the elements, sanitation facilities for both sexes, safe drinking water, trained teachers receiving domestically competitive salaries, teaching materials, and so on'.[73] Pursuant to section 19 of the RTE Act, all schools are required to comply with the norms and standards provided in the Schedule to the Act which spell out these infrastructural and related requirements. Some of these norms and standards, such as toilets and clean drinking water, go to the human rights and dignity of the children in schools, while other requirements, such as a library, playground and low student–teacher ratios, touch on minimum conditions for learning.

Closely related to quality education and norms and standards is equality. As the Report of the Special Rapporteur points out, the overall socioeconomic inequalities in a society are carried through to disparities in the quality of education that different children receive.[74] It is for this reason that the features in the RTE Act that relate to quality education, such as the norms and standards, must necessarily apply to all schools, whether public or private, minority or non-minority. They are meant to bridge the gap between public schools, elite private schools and low-fee private schools to enable all children, regardless of their socioeconomic status, to attend school in an environment and atmosphere that upholds their dignity and is conducive to learning.

When seen in this light, the case for reading down the *Society* and *Pramati* judgments and requiring minority schools to comply with the norms and standards of the RTE Act becomes even more compelling. Rather than destroying the minority character of a school, adherence to these norms and standards would benefit the students from minority communities who attend it. Even if minority schools claimed that adhering to any of these norms and standards might go against their school's character, it could be argued that not adhering

[71]UN Human Rights Council, 'Report of the United Nations Special Rapporteur on the Right to Education: Normative Action for Quality Education' (2 May 2012) UN Doc A/HRC/20/21, para 20.
[72]ibid.
[73]UN Committee on Economic, Social and Cultural Rights, 'General Comment No 13: The Right to Education (Art 13 of the Covenant)' (8 December 1999) UN Doc E/C.12/1999/10, para 6.
[74]'Report of the Special Rapporteur' (n 71) para 82.

to the norms and standards would be violating another fundamental right: the right to education of the students.

A situation in which a court tried to balance universally applicable laws on education against other rights (in that instance, religious freedom) is the judgment of the Constitutional Court of South Africa in *Christian Education SA v Minister of Education*.[75] In this case, the petitioner, a voluntary organisation of 196 independent Christian schools, sought to be exempted from the provision of the South African Schools Act that prohibited corporal punishment in schools.[76] The petitioner contended that 'corporal correction' was an integral part of the Christian religious ethos and that its prohibition therefore violated the religious freedom of parents and communities to practice their religion. The Constitutional Court held that, even if one were to assume that the law did infringe on parental rights to religious freedom, the restriction on corporal punishment could be 'regarded as reasonable and justifiable in an open and democratic society based on human dignity, freedom and equality'.[77] Sachs J stated on behalf of the Court:

> I do not wish to be understood as underestimating in any way the very special meaning that corporal correction in school has for the self-definition and ethos of the religious community in question. Yet their schools of necessity function in the public domain so as to prepare their learners for life in the broader society. Just as it is not unduly burdensome to oblige them to accommodate themselves as schools to secular norms regarding health and safety, payment of rates and taxes, planning permissions and fair labour practices, and just as they are obliged to respect national examination standards, so is it not unreasonable to expect them to make suitable adaptations to non-discriminatory laws that impact on their codes of discipline.[78]

The Constitutional Court's judgment is an example of a judicious balancing of the rights of a particular community, on the one hand, and the human rights, dignity and security of all learners, on the other. In India, too, a very similar balancing is warranted when the rights of minority communities appear to conflict with the rights of all children. If Indian courts were to apply a similar line of reasoning, they would be quick to conclude that there is no reason to exempt minority schools from laws of universal application, such as the norms and standards of the RTE Act.

Since the *Pramati* judgment, the central government has clarified that two provisions of the Act, the no-detention policy and the prohibition on corporal punishment,[79] are to apply to minority schools as well, and asked state governments to implement these provisions with respect to all schools. The

[75][2000] ZACC 11 (Constitutional Court of South Africa).
[76]South African School Act 84 of 1996, s 10.
[77]*Christian Education* (n 75) [28].
[78]ibid [51].
[79]See again RTE Act (n 10), ss 16 and 17.

reasoning the government gave was that these provisions are for the benefit of all children and do not infringe the rights of minorities under Articles 29 and 30 of the Constitution.[80] Very similar reasoning should apply with respect to the norms and standards in the Schedule to the RTE Act. Given their importance as ingredients for a quality education, it is hoped that the central government can issue a similar notification making these norms and standards applicable to minority schools as well.

6. Conclusion

In this article, we have argued that the *Society* and *Pramati* judgments have significantly diluted the scope of the Act. By prioritising the rights of minority educational institutions over the fundamental right to education of learners, these judgments have become an impediment to the realisation of the goal of universal access to quality education for all children. Further, as we have seen, the minority exemption has been subject to much misuse by private schools, which have sought to be classified as minority schools in order to escape the clutches of the RTE Act.

It is time that the *Pramati* judgment is reviewed and referred to a larger Bench so as to overturn the disastrous consequences it has had for the rights of learners. Until such time that this is done, there are two measures that can stem the unwelcome consequences that have flowed from the *Pramati* judgment and ensure that the exemptions to the RTE Act do not dilute the core of the Act itself. First, we need a coherent, well thought out and narrow definition of what constitutes a minority school in the context of these exemptions. This would go a long way in ensuring that private schools do not seek minority status solely to escape the clutches of the Act.

Second, the other provisions of the RTE Act, namely the norms and standards and provisions intended to improve the educational experience of all learners that are unrelated to a school's minority character, must apply to all schools, including minority schools. Ever since its enactment, the Act's most publicised and controversial provision has been the obligation on private schools to reserve 25% of their class strength with students from EWS backgrounds. Indeed, judging from the media coverage, one might be tempted to think that this was all that the Act was about. The *Society* and *Pramati* judgments only served to further divert attention to section 12(1)(c) and private schools at the expense of other provisions, such as the norms and standards discussed above, which receded further into the background. We believe that it is now time to reclaim the focus of the RTE Act for what it was originally intended: universal and equal access to quality education

[80] See 'RTE Minority School Rules' (*ABP Live*, 14 September 2014) <www.abplive.in/india-news/rte-minority-school-rules-127342> accessed 2 February 2016.

for all children. One place to start is to clarify that all schools, including minority schools, must comply with the norms and standards set out in the RTE Act, which contain the ingredients for a quality and equal education.

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