

Analysing the Judicial Enforcement of Section 12(1)(c) of RTE Act in Dinesh Biwaji State of Maharashtra, SLP(C) No. 010105 / 2017

Jarin Joseph

Legal Department, CMR University, Bangalore, Karnataka, India

DOI: <https://doi.org/10.47772/IJRISS.2026.100800802>

Received: 29 August 2026; Accepted: 03 September 2026; Published: 18 September 2026

ABSTRACT

A right so inevitable but still an unrealised dream for many; Right to Education even though recognised as a fundamental right is still not accessible to the weaker sections. The makers of the Right to Education Act, 2009 has shared the duty to provide free education to all with the unaided private schools of the state. A mandate under Sec 12 (1) (c) requires the “neighbourhood school” to provide reservation up to 25% of the strength of that class for the underprivileged with the benefit of reimbursement from the state government to that extent. The recent Supreme Court decision in *Dinesh Biwaji Ashtikar vs State Of Maharashtra* has reinforced the core constitutional vision of the Right to Education Act, 2009 (RTE Act). This paper analyses the true understanding of the Fundamental right to education and the dimensions of Sec 12 of the RTE Act through the detailed interpretation given by the Division Bench in the matter. Through this analysis, the paper aims to highlight the correctness of the decision made by the Supreme Court.

Keywords: Right to Education, Sec 12(1)(c), Reservation, Unaided private schools

INTRODUCTION

The constitutional directive of the right to education under Article 21A¹, along with the statutory mandate under Section 3² of the Act for free and compulsory elementary education can be fulfilled only with effective implementation of the provisions of the Act. This task of ensuring the implementation is not solely of the government rather the RTE Act lays down a framework of public -private partnership. The obligation of a “neighbourhood school” to admit children belonging to weaker and disadvantaged sections of our society, to the extent of twenty five percent of the class strength, under Section 12 of the Right of Children to Free and Compulsory Education Act, 2009 has the extraordinary capacity to transform the social structure of our society.³

As per Section 12(1) (c), the private unaided schools must annually map their total intake capacity to the entry-level out of which 25% must be designated as RTE quota. The children admitted to schools through this quota are not required to pay any form of fees, instead the state government has to reimburse the proportionate amount to the schools as per clause (2) of Section 12. To ensure the compliance and for monitoring purposes statutory bodies like the National Commission for Protection of Child Rights (NCPCR) and State Commissions (SCPCR) are appointed.

The Supreme Court in its landmark decision *Society for Unaided Private Schools of Rajasthan v. Union of India*⁴, challenging the constitutionality of Sec 12(1)(b) & (c) upheld its validity while holding that “Sections 12(1)(b) and 12(1)(c) are vehicles through which the concept of social inclusiveness is sought to be introduced into the private schools both aided and unaided including minority institutions, so as to achieve the object of free and compulsory education of the satisfactory quality to the disadvantaged groups and weaker sections of the

¹ The Constitution of India, 1950

² Right of Children to free and compulsory Education Act, 2009

³ Dinesh Biwaji Ashtikar vs State of Maharashtra (2026)

⁴ (2012) 6 SCC 1

society”.⁵ The vision of the makers is clear but the issue is in the implementation and practicability of the same. The recent Supreme Court decision in *Dinesh Biwaji Ashtikar vs State of Maharashtra* has once again highlighted the requirement of proper government regulation for the effectiveness of Section 12 (1)(c).

METHODOLOGY

This study adopts a doctrinal legal methodology to critically examine the judgement text, constitutional and statutory provisions dealing with Right to education and private school mandate. The primary data shall include the specific legislation, relevant rules, and precedents.

Duty Bearers of Right to Education

Article 21A declares the fundamental right to education and the obligation imposed on the state to provide free and compulsory education for children aged 6 to 14 years. This is a positive right that imposes a constitutional duty on the state authorities not merely to recognize it on the paper but to ensure its implementation. This right is translated into the Right of Children to Free and Compulsory Education Act, 2009 for its realisation. An analysis of the Act's framework reveals five distinct duty bearers. Detailing their respective obligations not only enforces strict accountability but also highlights the structural support they require from both the government and society.

1. The Appropriate Government (First bearer)- The Act recognises the Appropriate Government as the first bearer whose primary duty is to ensure establishment of neighbourhood schools within such areas or limits of neighbourhood schools.⁶ As per Section 7, the financial responsibilities arising for the implementation must be shared among the Central Government and State Governments⁷.
2. The Local Authority (Second bearer)- Also, has the duty to ensure establishment of neighbourhood schools in the prescribed limits under Section 6. The responsibilities are discussed in Section 9 which includes ensuring the implementation at the grassroot level, maintaining records of all children up to age 14⁸, and monitoring their admission, attendance, and completion of elementary education.⁹
3. The Neighbourhood school (Third bearer)- A neighbourhood school must provide free and compulsory education to all. Section 12 lays out the responsibilities of categories of schools:
 - a) While government schools must provide it to all students,¹⁰
 - b) Aided private schools must free and compulsory elementary education to such proportion of children admitted therein as its annual recurring aid or grants so received bears to its annual recurring expenses, subject to a minimum of twenty-five per cent.¹¹
 - c) Private, unaided, and specified category schools are legally required to reserve at least 25% of their Class I seats for children from weaker and disadvantaged sections (with provisions for state reimbursement).¹²
4. The Parent/ Guardian (Fourth bearer)- It is a fundamental duty of every to provide opportunities for education to his child as recognised in Article 51A (k) of the Constitution of India. This duty is made a statutory mandate under Section 10¹³ to perform this pious duty whereby they must enrol their children in the nearby neighbourhood school.

⁵ Society for Unaided Private Schools of Rajasthan v. Union of India (2012) 6 SCC 1

⁶ “Section 6. Duty of appropriate Government and local authority to establish school - For carrying out the provisions of this Act, the appropriate Government and the local authority shall establish, within such area or limits of neighbourhood, as may be prescribed, a school, where it is not so established, within a period of three years from the commencement of this Act.”

⁷ Section 7 of The Right of Children to Free and Compulsory Education Act, 2009

⁸ Section 9(d) of The Right of Children to Free and Compulsory Education Act, 2009

⁹ Section 9(e) of The Right of Children to Free and Compulsory Education Act, 2009

¹⁰ Section 12 (1)(a) of The Right of Children to Free and Compulsory Education Act, 2009

¹¹ Section 12 (1)(a) of The Right of Children to Free and Compulsory Education Act, 2009

¹² Section 12 (1)(c) of The Right of Children to Free and Compulsory Education Act, 2009

¹³ “Section 10. Duty of parents and guardian - It shall be the duty of every parent or guardian to admit or cause to be admitted his or her child or ward, as the case may be, to an elementary education in the neighbourhood school.”

5. The Elementary teacher (Fifth bearer)- As primary agents of nation-building, elementary school teachers carry an immense societal responsibility, necessitating that they be treated with profound respect and comprehensive care.

Judicial Interpretation of Section 12 of RTE Act

The foundational constitutional value of Section 12 of the RTE Act focuses on two main aspects: firstly, mandatory inclusion: It guarantees that at least 25% of entry-level seats in neighbourhood schools must be reserved for children from weaker and disadvantaged sections to ensure they have access to free elementary education. Secondly, social integration over segregation: By requiring these children to be admitted into local, unaided private schools, the law rejects parallel or segregated education systems. The neighbourhood school system aims to give every child access to a local education, which is vital for making schooling more inclusive and breaking down deeply rooted social inequalities.

Examining the current legal mechanism for policy implementation, the Court highlighted a critical absence of statutory rules enacted under the governing statute. The bench criticized state authorities for relying excessively on non-binding administrative circulars and Standard Operating Procedures (SOPs) to regulate the admission quota, thereby neglecting their rule-making mandates under Section 38. An Amicus Curie's opinion was sought to identify the issues and to give suggestions on the measures to be taken:

- **System Infrastructure & Compliance:** States and UTs must fully implement Section 12 and establish dedicated, transparent online admission portals. Information on these portals must be available in three languages (English, Hindi, and the local language).
- **Application Assistance & Transparency:** Schools must publish their available quota seats well in advance. To actively assist parents, authorities must set up dedicated help-desks, and instead of outright rejecting defective applications, they must provide a "defect clearance window" to correct mistakes.
- **Accountability & Safeguards:** A time-bound grievance redressal mechanism must be established for parent complaints. Any denial of admission must be documented with reasons, uploaded online, and reviewed by a Block Education Officer within 72 hours. Finally, training must be provided to prevent discrimination against disadvantaged children.

ANALYSIS

The Supreme Court viewed this case as a vital opportunity to establish a precedent that dismantles structural obstacles to Article 21A. In its ruling, the Court exposed systemic failures in executing Section 12(1)(c), attributing them directly to a missing regulatory framework. Although Section 38 of the RTE Act authorizes appropriate governments to enact delegated legislation—leveraging technical expertise to ensure effective implementation—informal executive orders and circulars cannot replace formal statutory rules. This regulatory void remains a primary cause of poor implementation on the ground.

Furthermore, the current admission process for this welfare scheme remains unsuited to illiterate or digitally marginalized parents. Requiring parents to navigate state RTE portals and complete online procedures creates significant barriers for those who lack digital literacy. Because the provision specifically targets economically weaker sections, policy design must account for their technical constraints by providing accessible, offline admission channels alongside digital options. Private unaided schools play a critical role in this framework and must actively facilitate admissions by publishing clear details regarding available EWS vacancies. Furthermore, to ensure transparency and accountability, schools must provide substantive, justifiable reasons whenever an application for admission is rejected.

Properly understood Section 12 seeks to concretise the constitutional principle of fraternity alongside equality and liberty as it makes it possible, normatively and structurally, for the child of a multimillionaire or even of a Judge of the Supreme Court of India to sit in the same classroom and at the same bench as the child of an autorickshaw driver or a street vendor. Through, effective channels of implementation the disadvantaged can receive the benefits of this welfare policy.

CONCLUSION

A reassuring decision by the Supreme Court to ensure access to education and equality among the underprivileged. No right can be realised if there is lack of adequate implementation mechanisms. Sec 12(1)(c) of the RTE Act aims at sharing the responsibility of providing free education onto the unaided private schools but unfortunately not being implemented properly. The State and UTs must formulate stricter rules regulations that are legally enforceable under Sec 38 of the RTE Act. A system of check needs to be formulated to ensure the accessibility and proper implementation.