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The Digital Divide and the Right to Education in India: A Constitutional Analysis of Article 21A

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Abstract

When schools across India closed their gates in March 2020, education moved almost overnight onto screens. For a child in a well-connected city flat the shift was an inconvenience. For a child in a village with no smartphone, a weak signal and no quiet corner to study in, it meant months without any schooling at all. This paper asks what Article 21A of the Constitution of India, which makes free and compulsory education a fundamental right of every child between six and fourteen, demands of the State once learning comes to depend on devices and connectivity. Drawing on judicial decisions, the Right of Children to Free and Compulsory Education Act, 2009, national survey data and policy documents, it argues that the right cannot be read as the promise of a seat in a classroom and nothing more. Read with Articles 14 and 21, and in the light of India's international obligations, Article 21A has substantive content: education must be available, accessible, acceptable and adaptable. Where the State itself chooses digital delivery, or makes digital competence part of what children are expected to learn, unequal access to technology stops being a policy gap and becomes a constitutional question. The paper examines the Kerala High Court's decision in Faheema Shirin, the Delhi High Court's judgment in Justice for All and the Supreme Court's response to it, and assesses the National Education Policy 2020. It closes with legal and policy proposals.

Keywords: Article 21A, right to education, digital divide, RTE Act 2009, substantive equality, internet access, COVID-19, NEP 2020

I. Introduction

Few constitutional promises are as easy to state and as hard to keep as the promise of education. Article 21A, inserted in 2002, reads in a single sentence: "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."[1] The sentence is short, but it carries a long history of struggle, from the Directive Principles of 1950, through two decades of judicial creativity, to a constitutional amendment and finally a statute.[2]

For most of that history the debate was about bricks and teachers: whether there was a school within walking distance, whether it had a toilet for girls, whether the teacher turned up. Those questions have not gone away. But a new one has been added to them. Education, at every level, now passes through digital channels. Textbooks carry QR codes that open video lessons. Homework arrives on a parent's phone through a messaging group. Admission forms, scholarship applications and examination results sit on

[1]Constitution of India, art 21A, inserted by the Constitution (Eighty-sixth Amendment) Act, 2002, s 2 (in force from 1 April 2010).

[2]Right of Children to Free and Compulsory Education Act, 2009 (Act 35 of 2009) (hereinafter 'RTE Act').

government portals. During the COVID-19 pandemic, for well over a year in many States, the screen was the only classroom there was.[3]

The difficulty is that access to that screen is spread very unevenly. A family's income, its location, its caste and religion, the gender of the child and the language the child speaks all shape whether a device exists in the home, whether the child may use it, and whether the child knows how to learn from it.[4] This is what is meant by the digital divide. It is not a single gap but a set of overlapping ones, and in India it runs along the same fault lines that the right to education was meant to close.

This paper takes up a simple question with difficult answers. Does the fundamental right in Article 21A have anything to say about the digital divide? Put differently, when the State provides education through digital means, or when meaningful education in the twenty-first century cannot be had without some digital access, is the State constitutionally bound to ensure that poorer children are not left outside the door? The argument developed here is that it is. The right to education has never been read by the Supreme Court as a bare right to enrolment. It has been read as a right to education of a certain quality, delivered on terms of equality, and protected as an aspect of the right to live with dignity under Article 21.[5] Once that is accepted, the digital divide cannot be treated as a matter of administrative convenience alone.

The paper proceeds as follows. Part II sets out the research questions and method. Part III describes the shape of the digital divide in Indian education using official survey data. Part IV traces the constitutional development of the right to education. Part V offers a reading of Article 21A for a digital age. Part VI looks at how courts responded during and after the pandemic. Part VII evaluates the policy response, and Part VIII identifies the gaps that remain. Part IX makes recommendations, and Part X concludes.

II. Research Questions and Methodology

The paper is organised around four questions. First, what is the present extent of the digital divide as it affects school education in India? Second, does the guarantee in Article 21A, read with Articles 14 and 21, extend to the digital means through which education is now delivered? Third, how have Indian courts approached claims for digital access in education? Fourth, are the existing statutory and policy frameworks adequate, and if not, what should change?

The method is doctrinal and analytical. Primary sources include the Constitution, the RTE Act, judgments of the Supreme Court and High Courts, and policy documents of the Union Government. Empirical context is drawn from official and widely relied-upon datasets: the National Sample Survey's 75th round on education, the Unified District Information System for Education Plus (UDISE+), the National Family Health Survey and the Annual Status of Education Report. Secondary literature on constitutional theory and on the digital divide is used to frame the argument. The paper does not attempt fresh fieldwork. Its contribution lies in placing the empirical evidence against the constitutional standard and asking what follows.

One limitation should be stated plainly. Data on digital access changes quickly, and different surveys measure different things: some count households, some count individuals, some count schools. Figures

[3] ASER Centre, *Annual Status of Education Report (Rural) 2021* (Pratham Education Foundation, 17 November 2021) records that schools in India remained closed for an extended period, with large numbers of children receiving little or no learning material during the closures.

[4] Sandip Datta and Geeta Gandhi Kingdon, 'Inequality in Internet Access in India: Implications for Learning during COVID' (IZA Discussion Paper No 15387, Institute of Labor Economics, June 2022).

[5] *Mohini Jain v State of Karnataka* (1992) 3 SCC 666; *Unni Krishnan JP v State of Andhra Pradesh* (1993) 1 SCC 645.

from different sources are therefore not always comparable, and the paper uses them to show patterns rather than to make precise claims.

III. Understanding the Digital Divide in Indian Education

A. Three layers of the divide

The phrase 'digital divide' first became popular in the 1990s to describe the gap between those who owned computers and those who did not. Scholars soon pointed out that ownership was only the first hurdle.[6] Jan van Dijk, whose work has shaped the field, describes a sequence of access: motivation to use technology, physical and material access to it, the skills needed to use it well, and finally actual use that brings real benefit.[7] A child may live in a house with a smartphone and still be on the wrong side of the divide if the phone belongs to a father who takes it to work, if data runs out by the middle of the month, or if no one at home can help the child make sense of an online worksheet.

Datta and Kingdon make the same point using Indian data. They separate access to the internet at home, the ability to use it, and actual use, and show that each hurdle filters out more children, with girls, rural children and children from poorer and socially disadvantaged groups falling away at every stage.[8] This layered view matters for law. A constitutional remedy that addresses only one layer, say by handing out tablets, may leave the deeper exclusions untouched.

B. Households: who is connected?

The most detailed pre-pandemic picture comes from the National Sample Survey's 75th round, conducted between July 2017 and June 2018. It found that only about 4 per cent of rural households and 23 per cent of urban households owned a computer, and that roughly 24 per cent of households across the country had internet access. The split between village and city was sharp: about 14.9 per cent of rural households had internet facilities compared with 42 per cent of urban households.[9] Among persons aged five and above in rural areas, fewer than one in ten could operate a computer.[10]

Behind these averages lie very large differences between States and income groups. Analyses of the same data showed that in some States the richest urban households were connected at rates many times higher than the poorest rural households, while Kerala and Himachal Pradesh stood out for comparatively low inequality.[11] The digital divide, in other words, is not one national gap. It is many local ones.

Things have changed since 2018, mostly because cheap smartphones and low data prices spread rapidly. The Annual Status of Education Report for rural India recorded that the share of enrolled children with a smartphone at home rose from 36.5 per cent in 2018 to 67.6 per cent in 2021. Yet the same survey found that about a quarter of children in homes with a smartphone could not use it for study at all, and that availability was markedly lower for children in government schools (63.7 per cent) than in private schools (79 per cent).[12] A device in the house is not the same thing as a device in the child's hands.

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[6] Pippa Norris, *Digital Divide: Civic Engagement, Information Poverty, and the Internet Worldwide* (Cambridge University Press 2001) 3–25.

[7] Jan van Dijk, *The Digital Divide* (Polity Press 2020) chs 2–5.

[8] Datta and Kingdon (n 4) 2–4.

[9] Ministry of Statistics and Programme Implementation, National Statistical Office, *Household Social Consumption on Education in India: NSS 75th Round (July 2017–June 2018)* (Report No 585, 2019) 25–28.

[10] ibid.

[11] See the State-wise and quintile-wise tables in NSO Report No 585 (n 9), discussed in Datta and Kingdon (n 4).

[12] ASER Centre (n 3) 'Smartphones at home and children's access to them'.

C. Gender: the double divide

Gender cuts across every other line. The fifth National Family Health Survey (2019–21) found that only 33.3 per cent of women aged 15 to 49 had ever used the internet. The sixth round, conducted in 2023–24, shows a striking improvement, with the figure for women rising to 64.3 per cent. Even so, the corresponding figure for men in that round was 80.5 per cent, and rural women continue to lag behind.[13] For schoolgirls the problem is not only whether a phone exists but who gets to hold it. Household studies during the pandemic repeatedly found that when a family had one phone, it went first to the son.[14]

D. Schools: the institutional divide

The divide is not only in homes. It runs through schools too. The UDISE+ data published by the Ministry of Education shows steady improvement, but from a low base.

Table 1: Schools with computer and internet facilities, all India

Facility in schools (%)	2022–23	2023–24	2024–25
Computer facility	47.7	57.2	64.7
Internet facility	49.7	53.9	63.5

Source: Ministry of Education, UDISE+ 2024–25.[15]

By 2024–25 nearly two-thirds of schools reported computer and internet facilities, a real gain over three years. But the other way of reading the same figure is that over a third of Indian schools still had neither. The averages also hide a public–private gap. An analysis of the 2023–24 data found that only about 44 per cent of government schools had functional computers for teaching, compared with about 71 per cent of private schools.[16] Since government schools serve most children from poor, rural, Dalit, Adivasi and minority families, the institutional divide piles on top of the household divide.

E. What the pandemic revealed

The pandemic did not create the divide. It exposed it. A field study by Azim Premji University across several States in 2020 reported that a large majority of children in government schools, close to 60 per cent, could not access online learning opportunities at all, and that teachers themselves found online classes a poor substitute for teaching in person.[17] ASER 2021 likewise found that, even eighteen months into the crisis, only a minority of children whose schools were still closed were receiving any learning material in a given week.[18]

[13]International Institute for Population Sciences, *National Family Health Survey (NFHS-5), 2019–21: India Fact Sheet* (Ministry of Health and Family Welfare 2021); *National Family Health Survey (NFHS-6), 2023–24: India Fact Sheet* (Ministry of Health and Family Welfare 2026).

[14]Datta and Kingdon (n 4) note that, controlling for other factors, girls were significantly less likely than their brothers in the same household to be able to use the internet.

[15]Ministry of Education, Department of School Education and Literacy, *Unified District Information System for Education Plus (UDISE+) 2024–25* (Government of India 2025); Press Information Bureau, 'UDISE+ 2024–25 Report' (28 August 2025).

[16]IndiaSpend, '#DataViz: Are Indian Schools Ready For The Digital Age?' (IndiaSpend) <https://www.indiaspend.com/data-viz/are-indian-schools-ready-for-the-digital-age-942576> accessed 16 November 2026.

[17]Azim Premji University, *Myths of Online Education* (Field Studies in Education, Azim Premji University, September 2020).

[18]ASER Centre (n 3).

The human stories behind such figures were widely reported: children climbing hills or trees to find a signal, siblings sharing one phone in shifts, girls withdrawn from study to help at home. These are not merely sad anecdotes. They describe children who, for a significant period, were cut off from the very thing the Constitution says they have a fundamental right to receive.

IV. The Constitutional Journey of the Right to Education

A. From Directive Principle to judicial recognition

The framers of the Constitution placed education among the Directive Principles of State Policy rather than the Fundamental Rights. Article 45, as originally enacted, asked the State to endeavour to provide, within ten years, free and compulsory education for all children until they completed fourteen years. Article 41 spoke of the right to education, but only "within the limits of its economic capacity and development".[19] The choice was deliberate. Members of the Constituent Assembly recognised the importance of universal education but were anxious about the cost of making it enforceable in a poor, newly independent country.[20]

The ten-year deadline passed, and then several more decades passed, without universal enrolment. By the late 1980s the Supreme Court had developed an expansive reading of Article 21. After Maneka Gandhi, the right to life was no longer a bare guarantee against arbitrary killing or detention; any procedure depriving a person of it had to be fair, just and reasonable.[21] In Francis Coralie Mullin the Court said that the right to life includes the right to live with human dignity and all that goes with it, including the bare necessities of life and facilities for reading and writing.[22] In Bandhua Mukti Morcha it linked the Directive Principles, including educational facilities, to the content of a dignified life.[23]

B. Mohini Jain and Unni Krishnan

The decisive step came in Mohini Jain v State of Karnataka. Dealing with capitation fees charged by private medical colleges, a two-judge bench held that the right to education flows directly from the right to life, because the dignity of the individual cannot be assured without education.[24] The judgment was bold, perhaps too bold: it did not limit the right by age or level of education, and it raised obvious questions about how the State could fund such a guarantee.

A year later a five-judge bench in Unni Krishnan refined the position. It agreed that the right to education is implicit in Article 21, but held that its content must be read in the light of the Directive Principles. Every child had a fundamental right to free education until fourteen; beyond that, the right was subject to the economic capacity and development of the State.[25] The Court's reasoning was important for what came later. It treated the Directive Principles not as a separate, unenforceable chapter but as a guide to the

[19] Constitution of India, arts 41 and 45 (as originally enacted).

[20] *Constituent Assembly Debates*, vol VII (23 November 1948), debate on draft art 36; see also Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press 1966) 75–83.

[21] *Maneka Gandhi v Union of India* (1978) 1 SCC 248.

[22] *Francis Coralie Mullin v Administrator, Union Territory of Delhi* (1981) 1 SCC 608, para 8.

[23] *Bandhua Mukti Morcha v Union of India* (1984) 3 SCC 161.

[24] *Mohini Jain* (n 5) paras 12–13.

[25] *Unni Krishnan* (n 5) paras 165–166 (Jeevan Reddy J).

meaning of the Fundamental Rights. And it took seriously the forty-odd years of State failure to meet the deadline in Article 45.[26]

C. The Eighty-sixth Amendment

Unni Krishnan set off a decade of public debate. The Law Commission recommended legislation to give effect to free and compulsory education, and a committee of State education ministers examined the financial implications.[27] In 2002 Parliament passed the Constitution (Eighty-sixth Amendment) Act. It did three things. It inserted Article 21A, making free and compulsory education for children aged six to fourteen an express fundamental right. It substituted Article 45, which now directs the State to provide early childhood care and education until the age of six. And it added clause (k) to Article 51A, placing on parents and guardians the duty to provide opportunities for education to their children in that age group.[28]

Two features of Article 21A deserve attention. First, it is phrased as a positive obligation: "The State shall provide". Most fundamental rights restrain the State; this one requires it to act. Second, it leaves the manner of provision to law. That phrase was the subject of much criticism, because it seemed to hand the content of the right to the legislature. It took seven more years before that law was made.

D. The RTE Act, 2009

The Right of Children to Free and Compulsory Education Act, 2009 came into force on 1 April 2010, the same day as Article 21A. Section 3 gives every child of six to fourteen the right to free and compulsory education in a neighbourhood school until the completion of elementary education.[29] 'Free' is defined broadly: no child is liable to pay any fee, charge or expense that may prevent the child from pursuing and completing elementary education.[30] Sections 8 and 9 place specific duties on the appropriate government and local authorities, including the duty to provide infrastructure, learning equipment and good quality elementary education conforming to prescribed norms.[31] Section 12(1)(c) requires private unaided schools to admit children from weaker sections and disadvantaged groups to at least 25 per cent of entry-level seats.[32] Section 19 and the Schedule lay down norms for schools, and Section 29 directs that curriculum must aim at the all-round development of the child.[33]

The Act was challenged by private schools. In Society for Unaided Private Schools of Rajasthan v Union of India, the Supreme Court upheld it, including the 25 per cent quota, except as applied to unaided minority schools.[34] In Pramati Educational and Cultural Trust v Union of India, a Constitution Bench upheld the validity of Article 21A itself, rejecting the argument that it damaged the basic structure, while exempting minority institutions, aided and unaided, from the Act.[35]

[26] ibid; see also MP Jain, *Indian Constitutional Law* (8th edn, LexisNexis 2018) 1310–1315.

[27] Law Commission of India, *Free and Compulsory Education for Children* (Report No 165, 1998).

[28] Constitution (Eighty-sixth Amendment) Act, 2002, ss 2–4.

[29] RTE Act, s 3.

[30] RTE Act, s 3(2).

[31] RTE Act, ss 8(d), 8(g) and 9.

[32] RTE Act, s 12(1)(c).

[33] RTE Act, ss 19, 29 and the Schedule.

[34] *Society for Unaided Private Schools of Rajasthan v Union of India* (2012) 6 SCC 1.

[35] *Pramati Educational and Cultural Trust v Union of India* (2014) 8 SCC 1.

E. Beyond enrolment: quality and conditions

Even before the RTE Act came into force, the Supreme Court had begun to read conditions into the right. In Avinash Mehrotra, decided after a fire in a Kumbakonam school killed scores of children, the Court held that the right to education includes the right to be educated in a safe school.[36] In Environmental and Consumer Protection Foundation v Delhi Administration, it directed States to provide drinking water and separate toilets in schools, treating basic infrastructure as part of what the right demands.[37] The thread running through these cases is clear. Article 21A is not satisfied by a school that exists on paper. The conditions in which education is delivered are part of the right.

V. Reading Article 21A in a Digital Age

A. The text and its limits

A sceptic might say that the argument ends with the text. Article 21A says nothing about computers or the internet, and its reach is limited to children aged six to fourteen. The phrase "in such manner as the State may, by law, determine" gives Parliament the choice of method. If the RTE Act does not mention digital access, the argument runs, there is no right to it.

That reading proves too much. The RTE Act also says nothing about fire exits, yet Avinash Mehrotra read safety into the right. Constitutional rights are not frozen at the moment of enactment. The Supreme Court has repeatedly described the Constitution as a living document whose guarantees must be read in the light of changed conditions.[38] Moreover, the phrase about the manner of provision regulates how the State delivers education. It does not permit the State to deliver it in a manner that denies it to some children altogether. A law that determined the manner of provision so as to exclude a class of children would plainly fail Article 14.

The age limit is a real constraint, and this paper respects it. The argument here concerns elementary education. But the reasoning applies with even greater force at the secondary and higher levels, where the reliance on digital resources is heavier, and where the right to education continues to have a footing in Article 21 as interpreted in Unni Krishnan, subject to the State's economic capacity.

B. Article 21A read with Article 14: substantive equality

The most powerful reason to read digital access into Article 21A comes from Article 14. Indian constitutional law has long moved beyond formal equality, which treats everyone the same, towards substantive equality, which asks whether a rule or practice in fact disadvantages a group that is already excluded.[39] The RTE Act itself embodies this idea. The 25 per cent reservation in private schools and the wide definition of 'free' both rest on the recognition that a neutral offer of a school seat is meaningless if a poor family cannot afford what goes with it.

Seen this way, a policy that moves teaching onto an online platform without ensuring that every child can reach that platform is not neutral. It quietly transfers a cost to families. Those who can afford a device and data continue to learn; those who cannot fall behind. Section 3(2) of the RTE Act says that no child shall be liable to pay any charge or expense that may prevent the child from completing elementary education.

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[36] *Avinash Mehrotra v Union of India* (2009) 6 SCC 398.

[37] *Environmental and Consumer Protection Foundation v Delhi Administration* (2012) 10 SCC 197.

[38] See *Justice KS Puttaswamy (Retd) v Union of India* (2017) 10 SCC 1, discussing the interpretation of fundamental rights in the light of technological change.

[39] Gautam Bhatia, *The Transformative Constitution: A Radical Biography in Nine Acts* (HarperCollins 2019) chs 2–3.

When the device and the data plan become the price of attending class, they are exactly such an expense. This was the heart of the Delhi High Court's reasoning in Justice for All, discussed in Part VI.

C. Article 21A read with Article 21: dignity and information

Article 21A grew out of Article 21, and the two remain closely tied. The Supreme Court's recognition of informational privacy in Puttaswamy treated the individual's relationship with technology as part of the right to life and personal liberty.[40] In Anuradha Bhasin v Union of India, decided during the communications shutdown in Jammu and Kashmir, the Court held that freedom of speech and expression and the freedom to carry on trade or business through the medium of the internet enjoy constitutional protection under Articles 19(1)(a) and 19(1)(g), and that any restriction must satisfy the tests of necessity and proportionality.[41] The Court stopped short of declaring internet access a fundamental right in itself. But its reasoning establishes that the internet is now a principal medium through which constitutionally protected freedoms are exercised. Education is one of those freedoms.

In Foundation for Media Professionals v Union Territory of Jammu and Kashmir, the petitioners specifically argued that 2G speed restrictions were making online education and telemedicine impossible during the pandemic. The Court did not order the restoration of 4G, but it set up a special committee to examine the necessity of the restrictions, implicitly accepting that the claims were weighty.[42]

D. The Faheema Shirin decision

The clearest judicial statement linking internet access to the right to education came from the Kerala High Court in Faheema Shirin RK v State of Kerala.[43] The petitioner, an undergraduate student, had been expelled from her college hostel for refusing to follow a rule that barred the use of mobile phones during long hours of the evening. Justice P.V. Asha held the restriction arbitrary. Relying on resolutions of the United Nations Human Rights Council, which recognise internet access as an important tool for promoting the right to education, and on the Kerala Government's own policy treating internet access as a right, the Court held that the right to have access to the internet forms part of the right to education as well as the right to privacy under Article 21.[44]

The decision has its limits. It was given by a single judge, in a case about a hostel rule restricting a student's own phone, and it did not concern a positive claim against the State to supply access. Its value lies in its premise: in contemporary conditions, being cut off from the internet is being cut off, at least in part, from education. That premise, once accepted, has consequences beyond the facts of the case.

E. The international framework

India's international commitments point the same way. Article 26 of the Universal Declaration of Human Rights and Article 13 of the International Covenant on Economic, Social and Cultural Rights recognise the right to education, and require primary education to be compulsory and available free to all.[45] Article

[40] *Puttaswamy* (n 38).

[41] *Anuradha Bhasin v Union of India* (2020) 3 SCC 637.

[42] *Foundation for Media Professionals v Union Territory of Jammu and Kashmir* (2020) 5 SCC 746.

[43] *Faheema Shirin RK v State of Kerala* AIR 2020 Ker 35; 2019 SCC OnLine Ker 2976 (WP(C) No 19716 of 2019, decided 19 September 2019).

[44] ibid paras 16–20; see also United Nations Human Rights Council, 'The Promotion, Protection and Enjoyment of Human Rights on the Internet' UN Doc A/HRC/RES/32/13 (18 July 2016).

[45] Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III), art 26; International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3, art 13.

28 of the Convention on the Rights of the Child, which India ratified in 1992, obliges States to make primary education compulsory and free and to encourage regular attendance.[46]

The Committee on Economic, Social and Cultural Rights, building on the work of the first UN Special Rapporteur on the right to education, Katarina Tomaševski, has explained that education in all its forms must show four inter-related features: availability, accessibility, acceptability and adaptability.[47] Accessibility in turn has three dimensions: non-discrimination, physical accessibility and economic accessibility. The General Comment notes expressly that physical accessibility may be achieved through modern technology, such as distance learning.[48] The implication is obvious. Where the State relies on technology to make education physically accessible, that technology must itself be accessible on a non-discriminatory and affordable basis. Indian courts have often used such international standards to give content to fundamental rights where domestic law is silent.[49]

F. A working standard

Bringing these strands together, a workable constitutional standard might be put as follows. Article 21A does not require the State to give every child a laptop. It does require that, whatever manner of providing education the State chooses, that manner must not exclude children on grounds of poverty, location, gender, disability or social group. Three practical consequences follow.

First, where the State makes digital delivery the primary or only means of education, as happened during the pandemic, it must ensure that every child within the age group can actually receive it, whether by supplying devices and data or by providing a genuine non-digital alternative of comparable quality. Second, where digital literacy becomes part of what the curriculum expects children to learn, as the National Education Policy now proposes, the State must ensure that the schools it runs are equipped to teach it. Third, when the State restricts connectivity, for instance through an internet shutdown, the effect on children's education must be weighed as a serious constitutional cost in the proportionality analysis demanded by Anuradha Bhasin.

Courts have long refused to accept that lack of funds excuses the State from basic constitutional duties.[50] At the same time, positive rights involve choices about the allocation of scarce resources, and courts are right to be cautious about designing programmes themselves. The standard proposed here tries to respect both points. It does not ask courts to fix budgets. It asks them to hold the State to the principle that the method of delivering a fundamental right must not become a means of denying it.

VI. The Courts and the Pandemic

A. Justice for All v Government of NCT of Delhi

The most important case on the digital divide in school education arose in Delhi. A non-governmental organisation, Justice for All, filed a public interest petition asking that children admitted under the 25 per

[46] Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, arts 28–29.

[47] Committee on Economic, Social and Cultural Rights, 'General Comment No 13: The Right to Education (Art 13)' (8 December 1999) UN Doc E/C.12/1999/10, para 6; Katarina Tomaševski, *Human Rights Obligations: Making Education Available, Accessible, Acceptable and Adaptable* (Right to Education Primers No 3, Sida 2001).

[48] General Comment No 13 (n 47) para 6(b)(ii).

[49] *Vishaka v State of Rajasthan* (1997) 6 SCC 241.

[50] *Municipal Council, Ratlam v Vardhichand* (1980) 4 SCC 162; *Paschim Banga Khet Mazdoor Samity v State of West Bengal* (1996) 4 SCC 37, para 16.

cent quota for economically weaker sections (EWS) and disadvantaged groups (DG) be supplied with devices and internet connectivity, so that they could attend the online classes that private schools had begun to hold during the lockdown.

On 18 September 2020 a Division Bench of the Delhi High Court, comprising Manmohan and Sanjeev Narula JJ, allowed the petition.[51] The Court held that where a school voluntarily chooses synchronous, real-time online teaching, it must provide EWS and DG students with adequate gadgets and an internet package free of cost. It reasoned that the cost of these items was not part of the tuition fee and fell within the meaning of 'free' education under Section 3(2) of the RTE Act, with private unaided schools entitled to claim reimbursement from the State under Section 12(2).[52] The Court warned that failing to do so would create two classes of students within the same classroom, and it spoke of the need to end what was described as a "digital apartheid". It also directed the constitution of a committee to standardise the gadgets and packages to be supplied.

The judgment is significant for several reasons. It treated the digital divide as a question of equality within the classroom rather than a mere welfare matter. It grounded the remedy in the existing text of the RTE Act, rather than inventing a new right. And it placed the primary duty on the institution that had chosen digital delivery, while leaving the final cost with the State.

B. The Supreme Court's stay

The Government of NCT of Delhi and the Union of India appealed. On 10 February 2021 a three-judge bench of the Supreme Court headed by Chief Justice S.A. Bobde issued notice and stayed the operation of the High Court's judgment.[53] According to reports of the hearing, the Delhi Government argued that the High Court had effectively rewritten the RTE Act, and the bench expressed concern about courts imposing additional financial burdens on the State.[54]

The stay is understandable as a matter of institutional caution. The High Court's direction did carry fiscal consequences, and the details of who should pay, and how much, were genuinely contestable. But a stay is not a judgment on the merits, and its practical effect was severe. Children who could not attend online classes in the 2020–21 and 2021–22 academic years did not get those years back.

C. Later developments

In a related appeal by an association of private schools, a bench of the Supreme Court led by Justice D.Y. Chandrachud, by an order of 8 October 2021, noted that the digital divide produced by the pandemic threatened the education of EWS and DG children, and asked the Delhi Government to formulate a plan of action to give real access to education for these students in line with the object of the RTE Act.[55] The matter has continued. In late 2025 the Supreme Court asked the Union Government to set out its policy

[51] *Justice for All v Government of NCT of Delhi* WP(C) 3004/2020 (Delhi HC, 18 September 2020); reported as AIR 2021 (NOC) 107 (Del).

[52] ibid; see also 'Delhi HC Directs Schools in Delhi to Provide Adequate Gadgets and Internet Package to EWS Students for Attending Online Classes' *LiveLaw* (18 September 2020).

[53] *Government of NCT of Delhi v Justice for All* SLP(C) No 13267 of 2020 (SC, order dated 10 February 2021); see 'Supreme Court Stays Delhi HC Order Directing Private Unaided Schools to Provide Internet Gadgets Free of Cost to EWS Students for Online Classes' *LiveLaw* (10 February 2021).

[54] ibid.

[55] *Action Committee Unaided Recognized Private Schools v Justice for All* SLP(C) No 4351 of 2021 (SC, order dated 8 October 2021).

for providing digital devices to EWS and DG students, and listed the case for further hearing in 2026.[56] As of the last reported listing, the central legal question remains open.

D. Assessment

The judicial record is therefore mixed. High Courts have been willing to recognise the link between digital access and the right to education, and to fashion remedies under the RTE Act. The Supreme Court has acknowledged the problem but has been reluctant to enforce a remedy that carries significant financial implications. This reluctance is not unusual in socio-economic rights adjudication. But it leaves the law in an uncertain state, and the uncertainty itself has a cost. Without a clear statement of the State's obligations, the next school closure, whether caused by a pandemic, a flood, a heatwave or civil unrest, will again find the poorest children with nowhere to go.

VII. The Policy Response

A. National Education Policy 2020

The National Education Policy 2020 (NEP) gives technology a central role. It devotes a full chapter to online and digital education and explicitly acknowledges that the benefits of online learning cannot be realised unless the digital divide is eliminated through concerted efforts such as the Digital India campaign and the availability of affordable devices.[57] It proposes a National Educational Technology Forum to advise on the use of technology, the expansion of digital infrastructure, teacher training in online pedagogy, and the development of content in Indian languages.[58]

The NEP deserves credit for naming the divide. Its weakness is that it is a policy, not a law. It creates no enforceable entitlements. It speaks of what should be done, often in the language of aspiration, without fixing timelines, responsibilities or budgets. From the standpoint of Article 21A, that matters. A fundamental right cannot be fulfilled by a policy document alone.

B. Digital initiatives

Several programmes have attempted to fill the gap. PM eVIDYA, announced in May 2020, sought to unify digital, online and on-air education, including through the DIKSHA platform for school content, one television channel per class from Class 1 to 12, and radio and podcasts.[59] The Ministry of Education's PRAGYATA guidelines of July 2020 offered advice on screen time and on the planning of digital education, and recognised the need for alternatives where connectivity was poor.[60] Some States went further. Kerala used its educational television channel, KITE VICTERS, to broadcast classes under the 'First Bell' programme from June 2020 and mobilised local bodies to arrange shared viewing for children without television sets.

The use of television and radio was an important recognition that 'digital' need not mean 'internet'. A broadcast lesson reaches far more homes than an online class, and does not need a personal device or a

[56] 'SC Demands Clarity on Government Measures to Equip EWS Students for Virtual Classes' *LatestLaws* (December 2025) <https://www.latestlaws.com/latest-news/sc-demands-clarity-on-government-measures-to-equip-ews-students-for-virtual-classes-read-order-231807/> accessed 16 November 2026.

[57] Ministry of Human Resource Development, *National Education Policy 2020* (Government of India 2020) ch 24.

[58] ibid ch 23, paras 23.3–23.5.

[59] Press Information Bureau, 'Finance Minister Announces Government Reforms and Enablers across Seven Sectors under Atmanirbhar Bharat Abhiyaan' (17 May 2020).

[60] Ministry of Human Resource Development, *PRAGYATA: Guidelines for Digital Education* (Government of India, July 2020).

data plan. But broadcast is one-way. It cannot replace the interaction between teacher and child that the RTE Act's own norms assume. It is best understood as a bridge, not a destination.

C. Connectivity infrastructure

At the level of infrastructure, the BharatNet project aims to connect all gram panchayats with broadband, and the UDISE+ figures in Part III show that school-level access has improved year on year. Yet implementation has been uneven, and a connection that reaches a panchayat office does not automatically reach a school, let alone a home. The gap between policy announcement and lived reality remains wide.

VIII. The Gaps That Remain

A. No statutory hook

The RTE Act was drafted in 2009, before smartphones were common in rural India. Its norms and standards in the Schedule speak of classrooms, teachers, playgrounds and libraries. They say nothing about digital infrastructure or digital learning. This silence is what made the Justice for All litigation so difficult. The High Court had to stretch the meaning of 'free' education; the Supreme Court was unpersuaded that it could stretch that far. A clear amendment would remove the ambiguity.

B. Children with disabilities

Children with disabilities face a sharper version of every barrier. Online content without captions, sign-language interpretation or screen-reader compatibility shuts them out even when a device is available. The Rights of Persons with Disabilities Act, 2016 requires that all content available in audio, print and electronic media be in accessible format and that persons with disabilities have access to electronic media, and it obliges educational institutions to provide inclusive education.[61] These obligations sit alongside Article 21A, but there is little evidence that they shaped digital education policy during the pandemic.

C. Language

Much digital educational content in India has been produced in English or Hindi. A child who speaks Santali, Gondi or Tulu at home, and who is in the early years of learning to read, gains little from a video in a language she does not yet understand. The NEP's emphasis on mother-tongue instruction must extend to digital content if the promise of acceptability and adaptability is to mean anything.

D. Privacy and the EdTech market

Digital education also brings new risks. The rapid growth of commercial education technology platforms has raised concerns about the collection of children's data, aggressive marketing to parents, and unfair loan-linked sales practices. The Digital Personal Data Protection Act, 2023 requires verifiable parental consent before processing a child's personal data and prohibits tracking, behavioural monitoring and targeted advertising directed at children.[62] These protections are welcome. But a child's right to education should not depend on her family's willingness to trade her data for access, and public platforms must be held to the highest standards of privacy recognised in Puttaswamy.

E. Internet shutdowns

Finally, India has, in recent years, repeatedly recorded among the highest numbers of government-ordered internet shutdowns in the world.[63] Shutdowns are usually imposed for reasons of public order, and Anuradha Bhasin requires them to be necessary, proportionate and subject to periodic review. Their effect

[61] Rights of Persons with Disabilities Act, 2016, ss 16 and 42.

[62] Digital Personal Data Protection Act, 2023 (Act 22 of 2023), s 9.

[63] Access Now, *Shrinking Democracy, Growing Violence: Internet Shutdowns in 2023* (KeepItOn Report, May 2024).

on children's education is rarely mentioned in shutdown orders. If digital access is now part of the right to education, that silence is a constitutional failing in itself.

IX. Recommendations

The analysis above suggests a set of steps, some legal and some practical. They are offered not as a complete blueprint but as a starting point.

1. Amend the RTE Act and its Schedule. Parliament should add minimum digital infrastructure norms to the Schedule: functional computers, internet connectivity and trained staff in every school, phased in over a fixed period with funding shared between the Union and the States. The definition of 'free' education in Section 3(2) should expressly include the devices and connectivity needed to participate where the school or the State has adopted digital delivery.

2. Make a non-digital equivalent mandatory. Any order or policy that shifts teaching online, even temporarily, should be required by law to provide an equivalent offline route, such as printed materials, community classes, broadcast lessons and teacher visits, so that no child is left without a means of learning.

3. Resolve the Justice for All question. The Supreme Court has an opportunity to state clearly what Article 21A requires when education moves online. Even if it declines to uphold the High Court's specific directions, a principled statement of the State's obligations, of the kind offered in Part V, would guide future governments and courts.

4. Close the public–private and gender gaps in schools. Funding for digital infrastructure should be targeted first at government schools in districts with the lowest connectivity, and at girls' schools and residential schools for Scheduled Tribe and Scheduled Caste children. Schools should be treated as community access points, so that children without a device at home can use one at school.

5. Build skills, not just supply devices. Teacher training in digital pedagogy, and digital literacy programmes for parents, especially mothers, must accompany any distribution of hardware. Van Dijk's layers of access remind us that a device without the skill to use it achieves little.

6. Protect children online. Public digital learning platforms should be designed for privacy, collect only the minimum data needed, and be subject to independent audit. Regulation of commercial EdTech should address deceptive sales practices aimed at low-income families.

7. Weigh education in shutdown decisions. Authorities ordering internet suspensions should be required to record their assessment of the impact on education and to consider less restrictive alternatives, such as whitelisting educational platforms.

8. Collect better data. UDISE+, NSS and NFHS should collect comparable, disaggregated data on device ownership, connectivity and actual use for learning, by gender, caste, disability and language, so that progress can be measured honestly.

X. Conclusion

Article 21A was the product of a long argument about whether the Indian State could be held to a promise that it had made in 1950 and failed to keep for half a century. The argument was won, at least on paper, when the right to education became a fundamental right and the RTE Act gave it shape. The digital divide reopens that argument in a new form. The question is no longer only whether there is a school, but whether the child can reach the place where learning now happens.

This paper has argued that Article 21A, read with Articles 14 and 21 and in the light of India's international commitments, answers that question. The right is to education, not merely to enrolment. It demands that

education be accessible on equal terms. When the State chooses digital delivery, or makes digital competence a part of what children must learn, it takes on a corresponding duty to ensure that poverty, geography, gender, caste, disability and language do not decide which children can benefit. The courts have begun to say this. Faheema Shirin recognised internet access as part of the right to education, and Justice for All turned that recognition into a concrete remedy. The Supreme Court's caution has left the matter unresolved, but not closed.

There is a risk, in debates of this kind, of treating technology as either the solution to every problem or a distraction from the real ones. Neither view is right. A tablet will not replace a good teacher, and a broadband line will not fix a school without toilets. But in a society where knowledge, opportunity and citizenship increasingly pass through digital channels, a child who is cut off from those channels is being denied something the Constitution promised her. The task for Parliament, the executive and the courts is to make sure that the newest tools of learning do not become the newest means of exclusion.

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