

Impact of the 86th Amendment on the Right to Education and Its Judicial Enforcement

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ABSTRACT

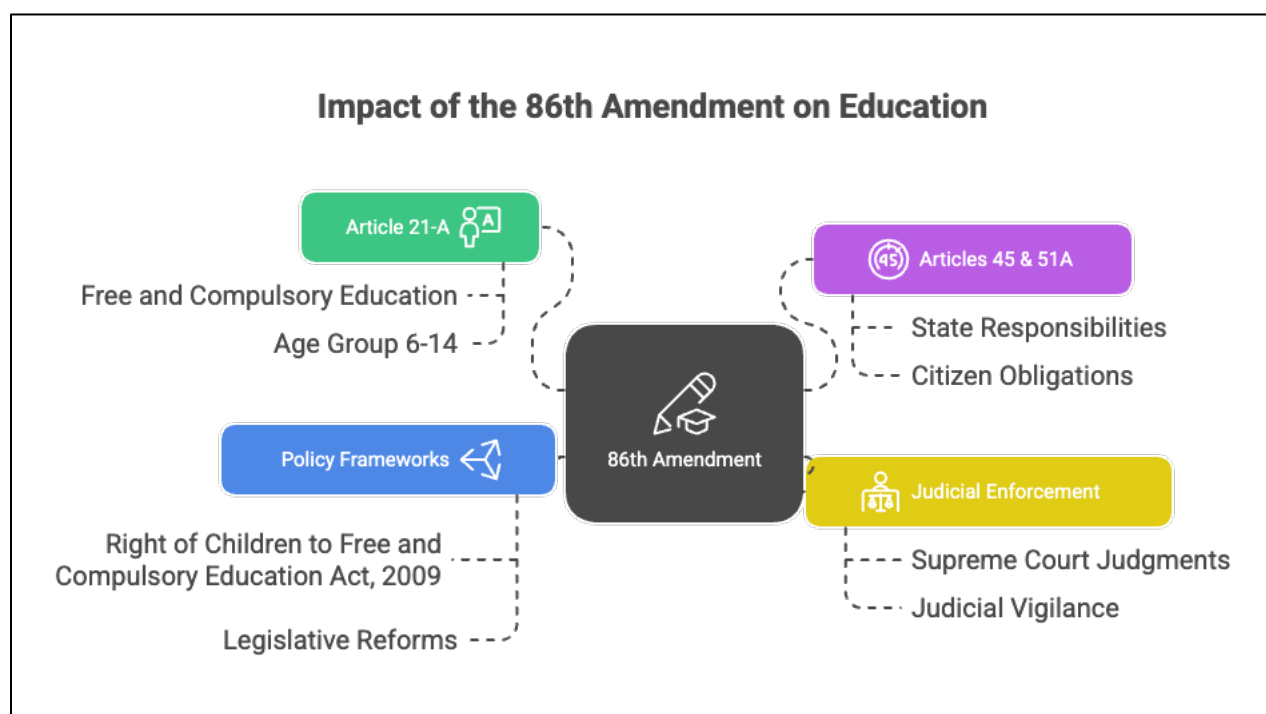
The 86th Amendment to the Constitution of India, enacted in 2002, marked a transformative step toward realizing the right to education as a fundamental entitlement for all children aged 6 to 14. By incorporating Article 21-A and amending Articles 45 and 51A, the amendment mandated free and compulsory education and imposed explicit duties upon both the State and citizens. This manuscript examines the socio-legal landscape before and after the amendment, exploring its impact on educational access, policy frameworks, and the evolving jurisprudence of the right to education. Through a detailed literature review, an analysis of key Supreme Court judgments, and a critical evaluation of implementation mechanisms, the study seeks to uncover the successes, limitations, and persistent gaps in enforcing this constitutional right. It further interrogates the role of the judiciary in upholding educational entitlements and identifies challenges posed by infrastructural deficits, socio-economic disparities, and policy execution. The findings highlight both the amendment's catalytic role in legislative reforms, such as the Right of Children to Free and Compulsory Education Act, 2009, and the ongoing need for judicial vigilance, stakeholder engagement, and systemic innovation to achieve the constitutional vision of universal, quality education. The study concludes with recommendations for bridging gaps in implementation and enhancing judicial enforcement for a more inclusive educational landscape.

KEYWORDS

86th Amendment, Right to Education, Article 21-A, Judicial Enforcement, Indian Constitution, Free and Compulsory Education, Supreme Court, RTE Act 2009, Fundamental Rights, Educational Policy

INTRODUCTION

The right to education is universally recognized as both a catalyst for individual empowerment and a cornerstone of national development. In the Indian context, education has occupied a pivotal space in constitutional discourse, public policy, and judicial interpretation. However, for decades after independence, access to education remained elusive for millions, hindered by socio-economic disparities, systemic neglect, and policy inertia. The 86th Constitutional Amendment, enacted in 2002, signaled a historic shift in India's approach to education, seeking to bridge the gap between aspirational rhetoric and enforceable entitlement.



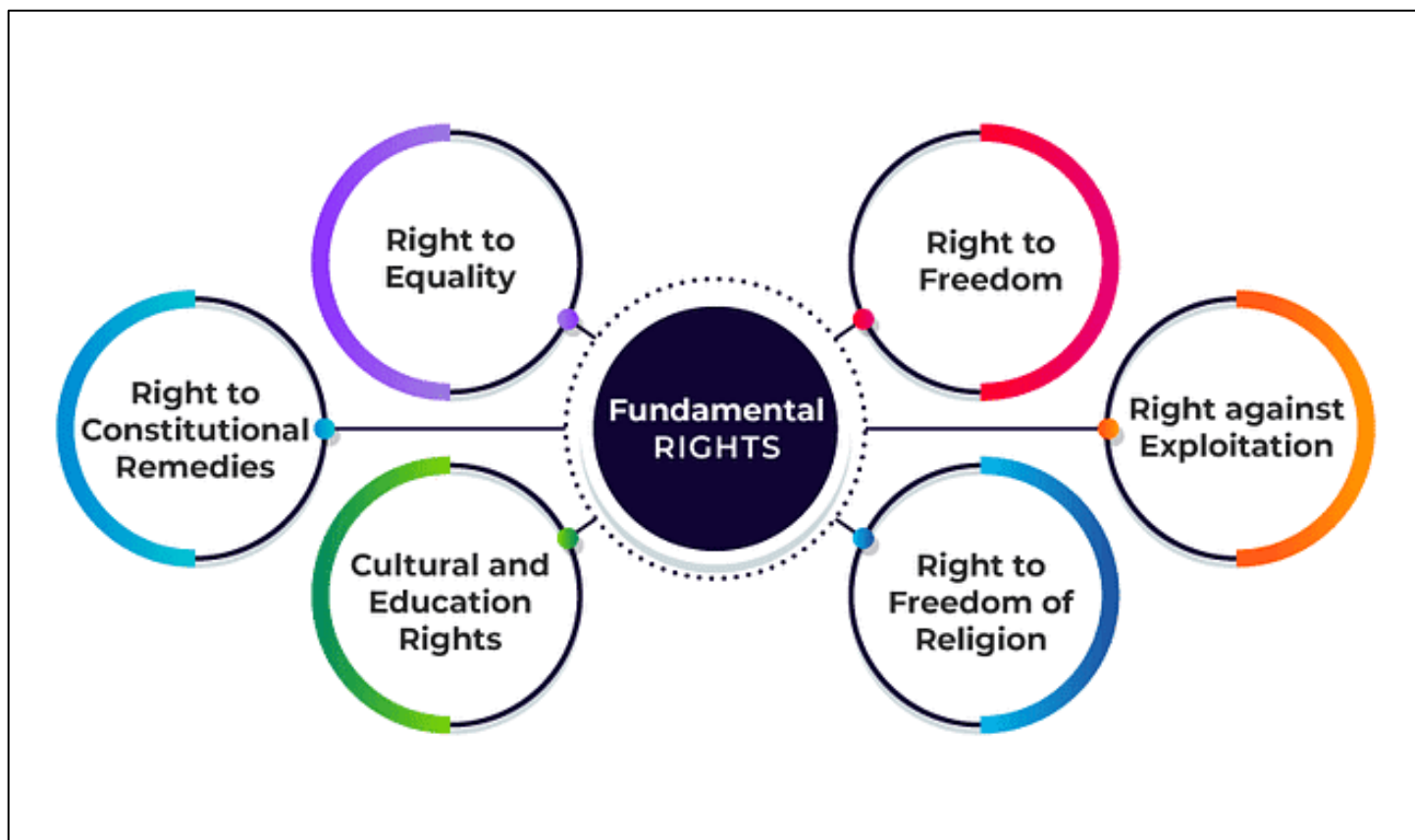
By introducing Article 21-A, the amendment conferred upon every child in the age group of 6 to 14 years the fundamental right to free and compulsory education. This was further complemented by the amendment of Article 45, which reframed the Directive Principle to focus specifically on early childhood care and education, and Article 51A(k), which made it a fundamental duty of parents and guardians to provide educational opportunities to their

children. This triad of constitutional provisions aimed to transform education from a mere policy objective into a legally enforceable right, reshaping the State's obligations and recalibrating the citizen-State relationship.

The amendment's impact has been far-reaching. It not only inspired the enactment of the Right of Children to Free and Compulsory Education Act, 2009 (RTE Act), which operationalized Article 21-A, but also spurred a flurry of judicial activism, with courts increasingly called upon to interpret, enforce, and expand the contours of the right to education. Landmark judgments have addressed critical issues such as the inclusion of marginalized groups, the duties of private unaided schools, and the adequacy of educational infrastructure, revealing both progress and persistent challenges.

This manuscript seeks to critically examine the multifaceted impact of the 86th Amendment on the right to education in India and its judicial enforcement. It explores the amendment's legislative intent, traces the evolution of legal and policy frameworks, and analyzes the judiciary's role in shaping the practical realization of educational rights. In doing so, it interrogates the intersection of constitutional law, public policy, and social justice, identifying the successes and shortfalls of the amendment in fostering equitable and quality education for all.

The study is structured as follows: following a comprehensive literature review, the manuscript outlines the research methodology, presents a detailed analysis of key findings—including judicial decisions, policy shifts, and implementation outcomes—and concludes with recommendations to strengthen the enforcement and effectiveness of the right to education. By providing a holistic and critical perspective, this research aims to contribute to ongoing debates and policy efforts centered on educational inclusion and constitutional rights in India.



Source: <https://thebooknotes.in/constitutional-framework/>

LITERATURE REVIEW

Historical Foundations of the Right to Education

The Indian Constitution, as adopted in 1950, recognized education as a critical component of nation-building, encapsulating it within the Directive Principles of State Policy (DPSP). Article 45, as originally framed, directed the State to endeavor to provide free and compulsory education to all children up to the age of 14 within ten years of the commencement of the Constitution. However, as a non-justiciable directive, Article 45 lacked the enforceability and immediacy of fundamental rights.

Scholars such as Dreze and Sen (1995) and Tilak (2004) have highlighted how the absence of a fundamental right to education contributed to persistent disparities in educational access and quality, particularly among marginalized communities. The State's efforts, although commendable in certain respects (e.g., the establishment of the Sarva Shiksha Abhiyan), were often stymied by inadequate funding, infrastructural gaps, and administrative hurdles. The judicial expansion of Article 21 (right to life and personal liberty) to include the right to education

in *Mohini Jain v. State of Karnataka* (1992) and *Unni Krishnan, J.P. v. State of Andhra Pradesh* (1993) marked a significant turning point, laying the groundwork for the constitutional amendment that would follow.

The 86th Amendment: Legislative Intent and Key Features

The 86th Constitutional Amendment emerged from a growing recognition of education's pivotal role in socio-economic development and the inadequacy of prior frameworks to deliver universal education. As noted by Upendra Baxi (2002), the amendment was propelled by both domestic advocacy and international commitments, including India's ratification of the Convention on the Rights of the Child (CRC) and its alignment with the global Education for All (EFA) movement.

The amendment's salient features included:

- **Insertion of Article 21-A:** Recognizing the right to free and compulsory education as a fundamental right for children aged 6 to 14 years.
- **Amendment of Article 45:** Recasting the directive to focus on early childhood care and education for children below the age of six.
- **Insertion of Article 51A(k):** Making it a fundamental duty for parents and guardians to ensure educational opportunities for their children.

These changes were accompanied by extensive debates in Parliament and civil society, with some commentators critiquing the exclusion of children below six and above fourteen from the purview of Article 21-A (Shiva Kumar, 2003; Ghosh, 2009). Others welcomed the clear articulation of State and parental responsibilities, viewing it as a paradigm shift in educational governance.

The RTE Act, 2009: Operationalizing Article 21-A

The passage of the Right of Children to Free and Compulsory Education Act, 2009 was a direct consequence of the 86th Amendment. The Act provided a comprehensive framework for the realization of Article 21-A, detailing norms and standards for schools, teacher qualifications, pupil-teacher ratios, and the prohibition of capitation fees and screening procedures.

Empirical studies (Bandyopadhyay & Subrahmanian, 2011; Ramachandran, 2017) have documented both achievements and shortcomings in the implementation of the RTE Act. While enrollment rates improved

significantly, issues of retention, learning outcomes, and infrastructure persisted. The Act's provision for 25% reservation for disadvantaged groups in private unaided schools became a focal point for judicial intervention, with courts frequently called upon to adjudicate disputes over admissions, reimbursements, and compliance.

Judicial Enforcement and Interpretation

The judiciary has played a proactive role in enforcing and expanding the right to education post-amendment. Landmark judgments such as *Society for Unaided Private Schools of Rajasthan v. Union of India* (2012) upheld the constitutionality of the RTE Act's reservation mandate, emphasizing the State's duty to ensure substantive equality. Similarly, in *Pramati Educational and Cultural Trust v. Union of India* (2014), the Supreme Court clarified the extent of the Act's applicability to minority institutions, balancing educational rights with constitutional protections for minorities.

Legal scholars (Sankaran, 2015; Kumar & Tiwari, 2018) have analyzed the judiciary's evolving approach, noting its tendency to interpret the right to education expansively, while also grappling with the practical limits of enforcement. Courts have repeatedly highlighted the need for adequate resources, monitoring mechanisms, and policy coherence to translate constitutional promises into lived realities.

Critical Perspectives and Contemporary Debates

Despite significant progress, several critiques persist. Scholars have questioned the adequacy of funding and infrastructure, the quality of education delivered under the RTE framework, and the persistent exclusion of certain groups—particularly children with disabilities, those in conflict zones, and older adolescents. The debates surrounding the age group covered by Article 21-A, the roles of private versus public provision, and the intersection of education with broader issues of social justice and equity remain contentious (Kingdon, 2020; Kumar, 2022).

Additionally, the COVID-19 pandemic exposed and exacerbated pre-existing vulnerabilities in the education system, challenging the State's capacity to fulfill its constitutional obligations under Article 21-A. The digital divide, learning loss, and increased dropout rates have renewed calls for innovative policy responses and robust judicial oversight.

Summary

The literature reflects a complex, evolving landscape, wherein the 86th Amendment catalyzed significant legal and policy reforms but also exposed new challenges in the quest for universal, quality education. The interplay between constitutional mandates, legislative frameworks, and judicial enforcement remains central to understanding the amendment's true impact.

Theme/Area	Key Authors/Studies	Main Findings & Insights
Historical Context and Article 45	Dreze & Sen (1995); Tilak (2004)	Article 45 as Directive Principle led to slow, uneven educational progress; lack of justiciability hindered universal access.
Judicial Expansion Pre-Amendment	Mohini Jain (1992); Unni Krishnan (1993)	Supreme Court expanded Article 21 to include right to education, creating groundwork for a constitutional amendment.
Legislative Intent of 86th Amendment	Upendra Baxi (2002); Shiva Kumar (2003)	Aimed to make education a justiciable right for ages 6–14; debates on scope and age-group exclusions.
Operationalization: RTE Act, 2009	Bandyopadhyay & Subrahmanian (2011); Ramachandran (2017)	RTE Act improved enrollment; gaps in retention, quality, and infrastructure persist; 25% quota for disadvantaged groups debated.
Judicial Enforcement and Major Judgments	Society for Unaided Private Schools (2012); Pramati Trust (2014); Sankaran (2015)	Courts upheld RTE Act provisions, stressed State's duty for equality, clarified Act's scope for minorities.
Critical and Contemporary Perspectives	Kingdon (2020); Kumar & Tiwari (2018); Kumar (2022)	Challenges remain in funding, inclusion of disabled/older children, digital divide post-COVID, need for ongoing judicial vigilance.

METHODOLOGY

Research Design

This study adopts a qualitative, doctrinal research approach to examine the impact of the 86th Amendment on the right to education and its judicial enforcement in India. The research is primarily based on the analysis of constitutional provisions, statutory texts, parliamentary debates, judicial pronouncements, and secondary literature such as academic articles, policy reports, and government documents.

Data Sources

1. Primary Legal Texts:

- The Constitution of India (with amendments)
- The Right of Children to Free and Compulsory Education Act, 2009
- Landmark Supreme Court and High Court judgments (e.g., Mohini Jain, Unni Krishnan, Society for Unaided Private Schools, Pramati Trust)

2. Secondary Literature:

- Academic books and peer-reviewed articles on constitutional law, education policy, and human rights in India
- Government reports (MHRD annual reports, National Sample Survey, etc.)
- Reports from international organizations (UNESCO, UNICEF, World Bank)

3. Policy Documents and Parliamentary Debates:

- Debates and committee reports from Parliament during the passage of the 86th Amendment and the RTE Act
- Policy evaluation reports on the implementation of Article 21-A and the RTE Act

Analytical Framework

The research utilizes a multi-dimensional framework:

- **Legal Analysis:** Interpretation of relevant constitutional provisions and statutes, tracing their evolution and legislative intent.
- **Jurisprudential Review:** Systematic review of landmark judicial decisions that have shaped the right to education post-amendment, focusing on judicial reasoning, scope, and limitations.
- **Policy and Impact Assessment:** Evaluation of educational outcomes through available data on enrollment, retention, learning levels, and inclusivity, supported by secondary research and government reports.
- **Thematic Synthesis:** Identification of key themes—such as access, equity, quality, and enforceability—that emerge across legal, judicial, and policy literature.

Limitations

- The research is primarily qualitative and doctrinal; while it incorporates available quantitative data (e.g., enrollment rates, government expenditure), it does not involve field surveys or primary empirical data collection.
- The scope focuses on the age group 6–14 years as defined by Article 21-A, with discussion on excluded groups (e.g., early childhood, secondary education) limited to policy critique.
- Judicial analysis is restricted to prominent Supreme Court and High Court decisions, recognizing that lower court jurisprudence may also impact local implementation but is less widely reported.

SOCIAL RELEVANCE OF THE TOPIC

The 86th Amendment's recognition of the right to education as a fundamental constitutional entitlement is not merely a legal development—it holds profound social relevance for India's democratic fabric and societal progress. In a country characterized by immense social, economic, and cultural diversity, education stands as the single most effective instrument for individual empowerment, community upliftment, and nation-building. The transformation of education from a policy directive to an enforceable right has directly influenced the lives of millions, particularly those historically excluded from mainstream educational opportunities.

Reducing Social Inequality:

Before the 86th Amendment, access to quality education was largely determined by one's socio-economic status, geographical location, caste, and gender. Marginalized groups—including Scheduled Castes, Scheduled Tribes, Other Backward Classes, girls, children with disabilities, and those living in rural or remote areas—faced significant barriers in accessing schools and remaining in the education system. By making elementary education a justiciable right, the Amendment has become a powerful tool for social justice, compelling the State to address these inequities and ensure that all children, regardless of background, have an equal chance to learn and succeed.

Catalyst for Social Mobility:

Education is widely recognized as a critical pathway to upward social mobility. The Amendment and subsequent enactment of the Right to Education (RTE) Act have enabled millions of first-generation learners to enter the

formal education system. This, in turn, enhances employment prospects, economic independence, and civic participation, fostering a more informed, capable, and confident citizenry.

Strengthening Democratic Values:

A well-educated population is the bedrock of a functioning democracy. By mandating education as a fundamental right, the 86th Amendment underlines the constitutional commitment to equality, dignity, and participatory governance. It helps cultivate critical thinking, tolerance, and respect for pluralism—values essential for social cohesion and the peaceful coexistence of India's diverse communities.

Promoting Gender Equity:

One of the most significant social gains of the 86th Amendment and its enforcement has been the improved participation of girls in education. The narrowing gender gap in school enrollment is a testament to the Amendment's transformative impact on traditional mindsets and cultural barriers that once limited opportunities for girls and women.

Mitigating Child Labour and Exploitation:

By making education compulsory, the Amendment addresses the root causes of child labor, trafficking, and early marriage. It provides a legal basis for interventions that protect children from exploitation, ensuring they remain in schools rather than entering the workforce prematurely.

Fostering Inclusive Development:

Education serves as a foundation for inclusive growth, enabling individuals and communities to better access healthcare, nutrition, sanitation, and other essential services. It supports the achievement of several Sustainable Development Goals (SDGs), including the eradication of poverty, gender equality, reduced inequalities, and sustainable economic growth.

Enhancing Social Capital and Community Participation:

The fundamental right to education encourages active participation by families, local communities, and civil society in educational governance. Provisions for School Management Committees and the emphasis on community monitoring under the RTE Act exemplify the broader social engagement fostered by the Amendment.

Addressing Contemporary Challenges:

In the context of the COVID-19 pandemic, the digital divide, and rapidly evolving labor market demands, the right to education is more relevant than ever. It ensures that children's learning needs remain a priority even amidst crises and compels the State to innovate and adapt to changing circumstances.

The 86th Amendment and its judicial enforcement are not just constitutional reforms—they are pivotal to India's ongoing struggle for social justice, equity, and inclusive national development. Their success or failure directly shapes the social landscape of the nation, making the right to education an issue of urgent and enduring social relevance for all stakeholders—students, families, policymakers, educators, and the broader society.

RESULTS

1. Legislative and Policy Transformation

The 86th Amendment led to a fundamental realignment of India's constitutional and policy approach to education. The insertion of Article 21-A crystallized education as a justiciable, enforceable right, compelling the State to take concrete action. Key outcomes include:

- **Enactment of the RTE Act (2009):** Provided statutory mechanisms for operationalizing Article 21-A, including mandates for infrastructure, teacher qualifications, and the inclusion of marginalized children.
- **Redefinition of State and Parental Duties:** Article 51A(k) imposed new responsibilities on parents/guardians, signaling a shared societal commitment.
- **Policy Convergence:** Major schemes (Sarva Shiksha Abhiyan, Mid-Day Meal Scheme, Samagra Shiksha) were aligned with the constitutional mandate, increasing funding and coverage.

2. Educational Access and Equity

- **Increased Enrollment:** National statistics demonstrate a significant increase in Gross Enrollment Ratio (GER) at the elementary level post-2002, rising from ~81% in 2000-01 to over 97% by 2018-19 (MHRD, UDISE+ data).
- **Improved Gender Parity:** Gender Parity Index in enrollment at primary and upper primary levels reached near parity by 2018-19, reducing the gender gap significantly.
- **Social Inclusion:** The RTE Act's mandate for 25% reservation for Economically Weaker Sections (EWS) in private unaided schools facilitated entry of marginalized groups into mainstream education.
- **Infrastructure Expansion:** The number of schools, classrooms, and availability of basic facilities (drinking water, toilets) saw considerable improvement, especially in rural and remote areas.

3. Judicial Enforcement and Expanding Jurisprudence

- **Affirmation of Fundamental Right:** The Supreme Court and High Courts have consistently interpreted the right to education as an essential aspect of human dignity and empowerment.
 - *Society for Unaided Private Schools of Rajasthan v. Union of India (2012):* Upheld constitutionality of the 25% EWS reservation, reinforcing the State's redistributive role.
 - *Pramati Educational and Cultural Trust v. Union of India (2014):* Clarified exemption of minority institutions from the RTE Act, balancing educational rights with minority protections.
 - Numerous PILs have been entertained to ensure compliance with infrastructure, admissions, and quality norms under RTE.
- **Judicial Directives for Implementation:** Courts have issued binding directions to state governments to address non-compliance, fill teacher vacancies, improve infrastructure, and ensure non-discriminatory access.

4. Gaps and Challenges

- **Quality of Education:** Despite high enrollment, learning outcomes remain suboptimal (ASER Reports 2018-2022). Foundational literacy and numeracy deficits persist, indicating that the focus on quantity has not translated into quality.
- **Retention and Dropout Rates:** Dropout rates, though declining, remain significant, especially among socially disadvantaged groups and in upper primary classes.
- **Exclusion of Certain Groups:** Children aged below 6 and above 14, children with disabilities, and children in conflict areas are inadequately covered by the current legal framework.

- **Resource and Capacity Constraints:** Many states face challenges in meeting infrastructural and human resource norms due to budgetary limitations.
- **Uneven Implementation:** There is significant inter-state disparity in implementation, with some states lagging behind in compliance with RTE norms.

5. COVID-19 and Digital Divide

- **Pandemic Disruptions:** The COVID-19 crisis severely disrupted educational access, highlighting the digital divide. Children from low-income and rural families faced significant challenges in accessing online learning, widening existing inequalities.
- **Judicial Response:** Courts directed state governments to ensure continuity of learning and provided guidelines for digital education, but the effectiveness of enforcement varied.

Domain	Positive Impact	Challenges / Gaps
Legal Framework	Education made a fundamental right; RTE Act operationalized it	Exclusion of <6 and >14 age groups; minority institution exemption
Access & Enrollment	Enrollment >97%, gender parity achieved	Dropouts among marginalized and older children
Social Equity	25% EWS quota in private schools, SC/ST/OBC inclusion	Uneven inclusion of CWSN, migrant children, out-of-school children
Quality	Norms for infrastructure, teacher quality, monitoring	Poor learning outcomes, teacher absenteeism, inadequate training
Judicial Enforcement	Strong PIL culture, binding directives, constitutional expansion	Implementation gaps, policy-state disconnects
Pandemic Response	Judicial directives for digital learning	Digital divide, loss of learning continuity

CONCLUSION

The 86th Amendment to the Indian Constitution marks a watershed moment in the country's educational and constitutional history. By elevating the right to education to the status of a fundamental right, the amendment laid the foundation for a transformative reimagining of State obligations, citizen duties, and the role of the judiciary in advancing social justice.

The positive impacts are significant:

- The legal architecture created by Article 21-A and the RTE Act has dramatically expanded access to education, fostered greater equity through targeted policies, and stimulated improvements in school infrastructure and enrollment—especially among girls and disadvantaged groups.
- Judicial enforcement has proven vital, with the Supreme Court and High Courts frequently intervening to uphold the spirit and letter of the law, hold governments accountable, and broaden the scope of educational entitlements.

However, the journey toward truly universal, quality education remains unfinished:

- Persistent learning gaps, high dropout rates in upper primary and secondary levels, and the exclusion of children outside the 6–14 age group highlight the limits of legal reform in the absence of robust implementation and adequate resource allocation.
- The pandemic has starkly revealed new vulnerabilities, making clear that legal rights must be supported by practical, context-sensitive measures—such as bridging the digital divide, supporting teachers, and engaging local communities.
- The role of the judiciary remains indispensable, but must be complemented by stronger administrative will, inter-sectoral coordination, and community participation.

Recommendations for Future Action:

1. **Broaden the Scope of Article 21-A** to cover early childhood and secondary education, in line with global trends and India's evolving demographic needs.
2. **Strengthen Implementation Mechanisms** with better monitoring, increased funding, and professional development for teachers.
3. **Enhance Judicial-Executive Coordination** to ensure that court directives are translated into actionable, contextually-relevant policies at the grassroots.
4. **Prioritize Inclusion** by addressing the needs of children with disabilities, migrants, and those in conflict-affected regions.
5. **Embrace Innovation** in pedagogy, assessment, and technology, especially in light of recent experiences with remote learning.

In sum, the 86th Amendment and its judicial enforcement have propelled India toward its constitutional promise of educational justice. Sustained commitment, responsive policymaking, and vigilant judicial oversight are

essential to transform the right to education from a constitutional aspiration into a lived reality for every child in India.

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