



Working Paper

For-Profit Schooling in India

Law, Limits, and Loopholes

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Introduction

Education has long been consecrated as a tool to achieve social mobility through which individuals can change their social situation or standard of living.¹ Placing trust in this value of education, our constitutional framework through the Preamble, the Directive Principles of State Policy, Fundamental Duties (Article 51A), and the jurisprudence of Article 21, places education not as a commodity to be exchanged in the market, but as a public function that the State is duty-bound to realise.²

The Supreme Court has frequently affirmed that the right to education is an integral element of the right to life and personal liberty guaranteed under Article 21 of the Constitution of India.³ At the same time, the Court and policymakers have also recognised that the State alone cannot satisfy the extensive demand for quality schooling,⁴ underscoring the importance of “private and voluntary efforts in the education sector.” However, the court has stressed that commercialisation of education “should not be permitted”⁵. Thus, while education was considered a public good, and a charitable pursuit, it was open for private actors, who were recognised as essential partners in fulfilling the State’s educational mandate. However, their participation is subject to overarching regulatory control as they supplement the government’s role in fulfilling the public purpose of education.⁶

The role of private schools in providing education has grown substantially in recent years. They constitute about 23.07 percent of all schools in the country, and account for approximately 38.82 percent of total student enrolment as per UDISE+ 2024-2025 data.⁷ Multiple

studies indicate these schools frequently provide better learning outcomes, safer environments, and special infrastructure than their government counterparts.⁸ In *Modern School v Union of India*,⁹ the Supreme Court expressly admitted the significant role played by private fee-charging schools in developing access to quality education, recognising that such institutions contribute to improved infrastructure, better academic standards, and greater parental choice. However, their growing contribution has not translated into enabling and sustainable working environments, as there is limited discussion on their capability to raise investments and funds to carry out their educational activities.

Right of Children to Free and Compulsory Education Act, 2009 (RTE Act) and state laws commonly mandate that only non-profit entities which are registered trusts, societies, or Section 8 companies may run schools.¹⁰ For instance, the Central Model Rules framed under the RTE Act¹¹ require every private school seeking recognition to submit a self-declaration stating that it is “not run for profit”, a requirement that has been adopted almost verbatim by most State RTE Rules. In parallel, the CBSE Affiliation Bye-Laws¹² mandate that an affiliated school must be managed by a non-proprietary registered trust, society, or Section 8 company. Taken together, these regulatory instruments construct school education as a charitable activity to be pursued in the public interest, rather than as a commercial business.

While these rules contemplate a genuine commitment to egalitarian education, they develop practical roadblocks

1 Mainul Hoque, ‘Impact of Education in Fostering Social Mobility’ (2023) 2 (2) *International Journal of Emerging Knowledge Studies* 44.

2 *Unni Krishnan, JP v. State of Andhra Pradesh* (1993) 1 SCC 645.

3 *Mohini Jain v. State of Karnataka* (1992) 3 SCC 666.

4 *Unni Krishnan, J.P. v. State of Andhra Pradesh* (1993) 1 SCC 645.

5 *Ibid.*

6 *T.M.A. Pai Foundation v. State of Karnataka* (2002) 8 SCC 481.

7 Government of India, *Economic Survey 2024-25* (Ministry of Finance, 31 January 2025).

8 Centre for Civil Society, *Schooled by the State: People’s Dive into Education Financing in India* (Centre for Civil Society 2023). See, Deepak Kumar and Pradeep Kumar Choudhury, ‘Do Private Schools Really Produce More Learning than Public Schools in India? Accounting for Student’s School Absenteeism and the Time Spent on Homework’ (2021) 83 *International Journal of Educational Development* 102395.

9 *Modern School v. Union of India*, (2004) 5 SCC 583.

10 Akash Pratap Singh and Tarini Sudhakar, ‘Restrictions on For-Profit Education in India’ (Centre for Civil Society, 11 May 2020).

11 Ministry of Human Resource Development, *Right of Children to Free and Compulsory Education Rules, 2010 (Model Rules)* (Government of India 2010) r 11(1)(b).

12 Central Board of Secondary Education, *Affiliation Bye-Laws* (2018) cls 3.3-3.4.

for schools to access credit and raise investments. The conditions work as an entry barrier for entrepreneurs who, in good faith, wish to set up schools to deliver quality education. As a result, only players who are able to navigate through cumbersome regulatory frameworks end up opening schools.¹³ Many private school owners also report complications in accessing formal credit or investment without the possibility of reasonable returns.¹⁴ This creates bottlenecks as while private schools supplement the government's role in providing quality education, they operate in an unsustainable environment with low opportunities for growth and long-term financial viability.

An indirect result of this is also instances where the law's loopholes are strained. The *Modern School* case reported how certain Delhi schools diverted tuition surpluses to trusts, took large interest-free deposits from parents, and accumulated "excess of income over expenditure" while technically complying with nonprofit rules. The Delhi High Court there instructed that fee income be spent exclusively on school expenses and barred any transfer of fees to the managing society, underlining how promoters sometimes resort to complex schemes to sustain their schools.¹⁵ This demonstrates how strict non-profit rules may incentivise opacity rather than compliance. Even though the current framework

promotes that investments be strictly spent on education, it may lead to informal or opaque financial practices because of lack of incentives.

These tensions between the constitutional objective of education as a public service and the on-the-ground reality that quality schooling needs capital and management resources frame the current debate on for-profit education in India. This paper investigates if the current not for profit and non commercialisation framework flows through constitutional, or statutory mandate, and argues why there needs to be a wider discussion on the possibility of schools running for profit. To address this, the paper first studies philosophical foundations of the constitution, and its drafted provisions. It then examines how the constitutional intent is interpreted by the judiciary, and the translation of this interpretation into statutory laws. Based on the analysis, it highlights challenges with the current framework and interpretation and argues for the need to provide a workable solution for schools that balances constitutional aims and philosophy with economic viability. The paper builds on the hypothesis that the current judicial and statutory framework creates financial constraints and discourages investments that undermine sustainability of school operations.

Constitutional Philosophy

A general exploration of the Constituent Assembly Debates reveals that most members insisted that education be universally accessible and culturally inclusive. Interventions during the Constituent Assembly Debates reveal a general concern for education as a tool for social development, inclusiveness, and dignity. Begum Aizaz-ud-Doula Razool, for example, highlights the need for language accessibility in education, warning that depriving children of an education in their mother tongue "militates against the very principle of

learning."¹⁶ Razool's comment highlights the need for making education inclusive and accessible, highlighting the need for extending it meaningfully to the grassroots levels.

Similarly, Pandit Thakur Das Bhargava stated how he is not in favour of discriminating between majority and minority in so far as admissions to educational institutions is concerned. This stemmed from a nationalistic point of view that in educational matters

13 Centre for Civil Society, *Ease of Operations for Budget Private Schools in India* (Global Education Monitoring Report, 2022).

14 Centre for Civil Society, *Revitalizing Education in India: The Role and Challenges of Private Sector Participation* (Working Paper No 342, New Delhi, 2025). See also, Zaini Zainuddin, 'Effectiveness of Education Financing Management in Public and Private Schools: Policy Perspective and Implementation' (2025) 17 (2) *AL-ISHLAH: Jurnal Pendidikan* 2331.

15 *Modern School v. Union of India* (2004) 5 SCC 583.

16 Constituent Assembly Debates, vol VII (6 December 1948) 860 (Begum Aizaz Rasul).

there should be no discrimination.¹⁷ His argument also shows resistance to exclusion or preferential treatments in matters of education. These comments highlight the general concern that education must remain inclusive and accessible, and should not be governed by market forces driven by incentives and profit-making. Such practices could potentially lead to exclusion, depriving children of a meaningful opportunity to be educated and develop into dignified citizens.

It is perhaps this idea that is reflected in our Constitutions' aspirations through the Preamble which pledges equality, justice, and dignity. These preambular aspirations guide an education policy oriented to social welfare, rather than commercial ends.¹⁸ The Directive principles of State Policy (Articles 45 and 46), also direct the state to provide free and compulsory schooling and to protect weaker groups “*from social injustice and all forms of exploitation*” through education.¹⁹ These Constitutional codifications solidify the dominant view that education fulfils crucial social objectives, enabling an environment for nation building and social development. Thus, any

private participation must operate consistently with public purpose, as it serves an essential public function. It cannot be allowed to undermine the collective aims of equality, inclusion, and social justice that education is constitutionally expected to serve.

This indicates that the way in which the Constitution perceives education is predominantly egalitarian where education must primarily serve equity, citizenship and human development. Any recommendation that education be run “*for profit*” raises deep philosophical concerns in this framework. Critics of a strict non-profit model note its potential drawbacks as the shortage of funding and diminished innovation but such critiques have yet to dislodge the essential premise that schooling should not be commoditised. The philosophical justification, drawn from Indian constitutional values, is that for-profit schooling is antithetical to the purposes of education as developed in the Indian polity. It is on these foundations that India's current regulatory regime, which effectively prohibits profit extraction by schools, is principally defended.

Constitutional Architecture

The Indian Constitution appears to have ingrained the above philosophical foundations in its framework. The right to education pervades multiple provisions as it is now a fundamental right, a directive principle, and a component of the right to life, and Article 21-A²⁰ explicitly guarantees “*free and compulsory education*” for all children aged 6–14 years.

Article 21-A imposes a binding constitutional obligation on the State to secure such education for all children aged six to fourteen years, rendering the right to education judicially enforceable and subject to constitutional remedies. In *Unni Krishnan v. State of Andhra Pradesh*²¹ The honourable Supreme Court underlined the

paramount duty of the State to make Article 45 “a reality,” declaring that a child has a “*fundamental right to free education up to the age of 14 years*”. Thus, Indian law places a positive obligation on the government to provide universal schooling. Crucially, in *Unni Krishnan*, the court also recognised that the State's obligation could be partly discharged through private actors, as it invited “*voluntary non-governmental organisations*” willing to impart free education, to undertake such initiatives. Yet, these organizations according to the court should be subject to State regulation.²² In theory, this develops space for private schools, provided they advance voluntary and charitable schooling to fulfil a public purpose.

17 Constituent Assembly Debates, vol VII (8 December 1948) (Pandit Thakur Das Bhargava).

18 Constitution of India, Preamble.

19 Constitution of India, art 45, 46.

20 Constitution of India, art 21-A.

21 *Unni Krishnan, J.P. v. State of Andhra Pradesh* (1993) 1 SCC 645.

22 *Ibid* para 1.9.

The *Mohini Jain v. State of Karnataka*²³ interpretation indicated a constitutional change where education was raised from a simple policy aim to an essential element of the right to life. In *Unni Krishnan*, this expansive interpretation was recalibrated by confining the constitutionally guaranteed right to free education to children up to the age of fourteen years. While the court welcomed private participation to satisfy the ends of this right, their participation was subject to regulatory control, which included norms for charging fees, while prohibiting capitation and profiteering. Therefore, the Court strived to strike a balance as to upholding a core right for children while permitting private schooling to flourish within a charitable framework.

While this explains private participation in achieving fundamental right to education, a limiting principle arises from Article 19(1)(g), which guarantees the right to practice any profession, trade or business. In *T.M.A. Pai Foundation v. State of Karnataka*²⁴, the Court held that the private provision of education is an “occupation,” but crucially added that education is not a trade or business. Citing earlier rulings like *The State of Bombay v. R.M.D. Chamarbaugwala*²⁵, the Court remarked that “education cannot be a profession or a trade in the sense of Article 19(1)(g),” since trade implies profit motive. Therefore, the *TMA Pai Foundation*, held that individuals have a right to establish educational institutions, but only on a not-for-profit basis. In effect, Article 19 is read not to protect a “right to profit” by way of profiteering in education. Rather, it protects the right to set up schools (as charitable enterprises) subject to reasonable regulation.

*Islamic Academy of Education v. State of Karnataka*²⁶ and *Modern School v. Union*²⁷ of India reinforced this outlook. The *Islamic Academy* judgment, in particular, declared that education is a charitable activity and held that unaided (private) schools “cannot take recourse to profiteering” and cannot sell seats for profit. Likewise, the *Delhi Modern School* case noted that commercialisation of education “cannot and should not be permitted” as a matter

of public policy. These judgments allow private schools to charge fees, but only to the extent of recovering costs and maintaining the school. Any surplus (“reasonable surplus”) must be reinvested in the institution, and no profits can be distributed to owners or external parties.

In practical terms, this Constitutional prototype has demonstrated both coherence and tension. On one hand, the Supreme Court has consistently held that profit-making restrictions do not violate Article 19(1)(g) because the very nature of education excludes it from being a protected trade or business. On the other hand, these stipulations raise tensions in exercising Article 19(1)(g) because of restrictions on private autonomy. The 2005 *P.A. Inamdar v. State of Maharashtra* case struck down state rules that mandated quotas and fee caps for unaided institutions, on the ground that such controls on management, admissions or fees (beyond prescribed parameters) were unconstitutional infringements of Articles 19 and 30. The case reiterated that schools could charge fees and generate surplus but reaffirmed the ban on capitation and profiteering²⁸. In amending the law post-*Inamdar*, Parliament specified the State’s power to impose fee regulation on non-minority unaided schools, while maintaining the non-profit requirement via RTE rules. Thus, while the court in its interpretation, did not support schools becoming profit-driven businesses, it safeguarded their managerial autonomy. This created an uneasy equilibrium between free-market principles and social welfare norms. Contemporary policy discussions recognise these tensions.

In conclusion, the constitutional architecture of schooling in India appears to be embedded in the ideal of education as a public good. It inaugurates the right to free elementary education (Article 21-A) and supervises the State to promote schooling (DPSPs). Through judicial interpretation along with subsequent legislative and regulatory measures, private schools have been effectively limited to functioning on a non-profit basis, which mirrors a judicially established view that profit-

23 *Mohini Jain v. State of Karnataka* (1992) 3 SCC 666.

24 *T.M.A. Pai Foundation v. State of Karnataka* (2002) 8 SCC 481.

25 *State of Bombay v. R.M.D. Chamarbaugwala* (1957) SCR 874.

26 *Islamic Academy of Education v. State of Karnataka* (2003) 6 SCC 697.

27 *Modern School v. Union of India* (2004) 5 SCC 583.

28 *P.A. Inamdar v. State of Maharashtra* (2005) 6 SCC 537.

driven education is at odds with the constitutional principles of equality and social justice.

Evolution of judicial engagement with the question of for-profit

In its earlier rulings, the Supreme Court struck a careful balance between preventing the commercialisation of education and recognising the legitimacy of regulated private participation, by permitting reasonable institutional surplus while prohibiting profiteering and capitation fees.²⁹ While in *Unni Krishnan*, the court treated any earnings motive with strict suspicion, it relaxed strict regulations afterwards.³⁰

For instance, *T.M.A. Pai* (2002), talked about providing “maximum autonomy” in administration, and fee setting, which included raising a surplus fund.³¹ Likewise, in *Modern School v. Union of India* (2004), the Court maintained that an unaided school had a right to impose fees and create its own “development fund” for infrastructure, subject only to the restrictions of no profit-taking and no capitation fees.³² In both *TMA Pai* and *At Modern School*, the court stressed that any surplus generated must be used exclusively for the institution’s expansion and cannot be diverted for management or private gain.³³

The *P.A. Inamdar* decision explicitly repealed the *Unni Krishnan* fee-scheme but upheld its core limits. In this judgment, the Court again held that “*there should not be a capitation fee or profiteering*” and that a fair surplus to meet development “*does not...amount to profiteering*”³⁴. Justice S.B. Sinha (*Islamic Academy*) even proposed a quantitative yardstick, in which he validated reasonable surplus if it lies in the range of 6–15% of costs.³⁵ These verdicts recognised the autonomy of private institutions but prohibited sale-of-seat practices, asserting that

these surpluses must be ploughed back into education.³⁶

In conclusion, courts have asserted private autonomy within permissible limits, allowing for surpluses that must strictly be used for school development and infrastructure. Yet, these judgements have failed to clarify other financial parameters for institutional functioning such as legitimate cost recovery, surplus allocation, and reinvestments. Without these workable solutions, private schools are put in jeopardy because the line between permissible surplus and impossible profiteering remains blurred. As a result, their routine financial decisions could be retrospectively scrutinised as profiteering.

Case Study: Recalibration on profit-making in school education by the Jammu & Kashmir High Court (2026)

In *New Convent High School v. Union of India*³⁷ Hon’ble Jammu & Kashmir High Court, while reaffirming that education cannot be treated as a trade or business in the conventional commercial sense, rejected that private unaided schools are driven purely by philanthropy. The Court recognised that establishing and running private schools constitutes an “occupation” under Article 19(1)(g) of the Constitution, involving substantial investment of money, time, and labour, and observed that it would be “*living in a fool’s paradise*”³⁸ to presume that citizens undertake such activity exclusively for charitable reasons. The Court took judicial notice of the structural inadequacies of the public schooling system and conceded that private education has, instead of just supplementing, in several contexts, effectively supplanted public education. It also pointed out that parents approach private schools not because of any compulsion created by such institutions themselves, but

29 *Unni Krishnan, J.P. v. State of Andhra Pradesh* (1993) 1 SCC 645; *Modern School v. Union of India* (2004) 5 SCC 583.

30 *Ibid.*

31 *Ibid.*

32 *Modern School v. Union of India* (2004) 5 SCC 583.

33 *T.M.A. Pai Foundation v. State of Karnataka* (2002) 8 SCC 481; *Modern School v. Union of India* (2004) 5 SCC 583.

34 *Ibid.*

35 *Islamic Academy of Education v. State of Karnataka* (2003) 6 SCC 697 (S.B. Sinha, J., concurring).

36 *Modern School v. Union of India*, (2004) 5 SCC 583; See also, *P.A. Inamdar v. State of Maharashtra*, (2005) 6 SCC 537.

37 *New Convent High School v. Union of India* 2026 SCC OnLine J&K 135 para 40..

38 *Ibid* para 40.

due to deficiencies in public provision.³⁹

The Court provided vital doctrinal transparency on the meaning of “commercialisation” and “profiteering” in school education. It held that the constitutional understanding of education does not prohibit the generation of surplus or returns per se, but condemns the extraction of excessive or unfair profit through the commercialisation of an essential public function. In this context, the Court rejected the proposition that private unaided schools must operate on a strict no-profit, no-loss basis, observing that such an anticipation is unrealistic and detached from economic realities. It explained that the legal limitations on commercialization and profiteering do not prevent the generation of surplus for future growth of institutions or the ability to earn reasonable returns on investments in educational facilities and services. Such surplus is allowed only if it is not redirected for personal gain and is still under regulatory scrutiny to avoid capitation fees and exploitative practices.⁴⁰

Read alongside the Supreme Court’s jurisprudence in *T.M.A. Pai Foundation v. State of Karnataka*, *Islamic Academy of Education v. State of Karnataka*, and *P.A. Inamdar v. State of Maharashtra*, the J&K High Court’s articulation supplies contemporary content to the otherwise indeterminate

standard of “reasonable surplus.”⁴¹ While the Supreme Court consistently permitted reasonable surplus and prohibited profiteering, it did not clarify the permissible boundary between surplus and impermissible profit extraction. This doctrinal gap gets narrowed through the J&K judgment as it distinguishes institutional sustainability and growth (which is considered legitimate) from exploitative commercial conduct. In doing so, it recalibrates the operative meaning of “no profiteering” in a manner that remains faithful to the constitutional conception of education as a public good.

Yet, while the judgment constricts the conceptual gap surrounding profiteering in school education, it does not fully resolve the absence of a uniform, binding standard applicable across jurisdictions. Taken together, this jurisprudence makes it clear that schools cannot be run as businesses for private gain, but they have only indicated what is allowed, with no clear legislative test, schools and regulators must guess where surplus ends and “profit” begins. Even on record, Justice Sinha’s ad hoc 6–15% guideline for surplus has no binding force.⁴²

Similar views regarding the role of private schools and their ability to earn reasonable investments have also been presented in the case of *New Convent High School v. Union of India*.⁴³

Current statutory framework governing private schools

Central Law and Rules

The RTE Act frames private schools as service-oriented institutions. Section 2 (n) of the Act defines “school” to include “an unaided school not receiving any kind of aid or grants”.⁴⁴ By expressly including unaided private schools within its statutory definition, the RTE Act subjects them to obligations designed to realise a

fundamental right, thereby treating private schooling as an instrument through which the State’s constitutional duty to provide education is discharged rather than as a purely private commercial activity.⁴⁵ Under Section 12(1) (c), any private unaided school must admit 25% of its entry-level class from disadvantaged/weaker-section children, provide them with free education, and have the

39 Ibid para 41

40 Ibid paras 41–44.

41 *T.M.A. Pai Foundation v. State of Karnataka* (2002) 8 SCC 481; *Islamic Academy of Education v. State of Karnataka* (2003) 6 SCC 697; *P.A. Inamdar v. State of Maharashtra*, (2005) 6 SCC 537.

42 *Islamic Academy of Education v. State of Karnataka* (2003) 6 SCC 697 (S.B. Sinha, J., concurring).

43 *New Convent High School v. Union of India* 2026 SCC OnLine J&K 135.

44 Right of Children to Free and Compulsory Education Act, 2009, s. 2(n).

45 Ibid, ss. 12(1)(c), 18, 19, 13.

State reimburse the per-child cost⁴⁶. To implement this, Section 18 prevents any private school from operating without official recognition, and Section 19 requires schools to meet prescribed norms and standards.⁴⁷ Section 13 explicitly prohibits capitation fees on admission.⁴⁸ Concurrently, these conditions indicate that private schools serve a public welfare function.

Although the RTE Act itself does not use the term “non-profit,” its requirements (no capitation, compulsory free seats, etc.) and the Model RTE Rules construct non-profit operation as a de facto requirement of recognition.⁴⁹ For instance, the Andhra Pradesh RTE Rules mandate a school to “not be run for profit to any individual, group or association of individuals”⁵⁰. Maharashtra’s RTE Rules similarly mandate that a private school “is not run for profit of any individual, group or association of individuals”⁵¹. Similarly, Kerala’s rules insist on a self-declaration that the school “is not run for profit”⁵². In aggregate, the RTE Act and model rules construct private schooling as a non-profit public service, only recognised (i.e. compliant) schools may function, and those must be run by non-profit entities (trusts, societies or similar bodies) that serve the community rather than extract profit.

State- Level Regulations

Under India’s Right to Education (RTE) framework and Supreme Court precedent, private schools are commonly mandated to operate on a non-profit basis. The RTE Act and its model rules require that any recognised private school must affirm that it “is not run for profit to any individual, group or association of individuals or any other persons”. Almost all states have incorporated

this provision⁵³. For instance, Maharashtra’s RTE laws explicitly instruct that a school must be operated by a registered society/trust and “is not run for profit to any individual, group or association of individuals or any other persons”⁵⁴. Similarly, Delhi’s laws limit school administration to societies/trusts and require the school to be “not run for profit”⁵⁵. Tamil Nadu, Karnataka, Kerala, and other states’ rules incorporate nearly identical language: a trust or society must manage schools and must not distribute profits⁵⁶. In practice, every state’s RTE law or recognition procedure binds private schools to charitable status, requiring any surplus to be reinvested in the school (supporting infrastructure, teachers, or students) rather than paid out to owners or investors.⁵⁷

- **Non-Profit Requirement (Majority of States):** Most States mandate that authorized private schools function as non-profit organizations. State Right to Education (RTE) regulations uniformly require that school recognition is contingent on management by non-profit entities, such as registered societies or public charitable trusts, and there is a clear restriction against profit distribution. This requirement for a non-profit operation is consistently reflected across State regulations, including those in Maharashtra, Tamil Nadu, Karnataka, and Kerala, which include similar clauses stipulating that schools should not be operated for private profit. In each case, the condition is affixed to recognition as schools must declare compliance (with a self-declaration or in the recognition application) that they fulfil norms and that the school is not profit-oriented. The Centre’s Model RTE Rule 11(1)(b) mandates

46 Ibid, s. 12(1)(c).

47 Ibid, ss. 18-19.

48 Ibid, s. 13.

49 Ministry of Human Resource Development, *Model Rules under the Right of Children to Free and Compulsory Education Act, 2009*, r. 11(1)(b).

50 Government of Andhra Pradesh, *Andhra Pradesh Right of Children to Free and Compulsory Education Rules, 2011*, r. 11(1)(b).

51 Government of Maharashtra, *Maharashtra Right of Children to Free and Compulsory Education Rules, 2011*, r. 6(1)(b).

52 Government of Kerala, *Kerala Right of Children to Free and Compulsory Education Rules, 2010*, r. 11(1)(b).

53 Right of Children to Free and Compulsory Education Act 2009; Ministry of Human Resource Development, *Model Rules under the Right of Children to Free and Compulsory Education Act, 2009*, r 11(1)(b).

54 Government of Maharashtra, *Right of Children to Free and Compulsory Education Rules, 2011*, r 6(1)(b).

55 Government of NCT of Delhi, *Right of Children to Free and Compulsory Education Rules, 2011*, r 11(1)(b).

56 Government of Tamil Nadu, *Tamil Nadu Right of Children to Free and Compulsory Education Rules, 2011*; Government of Karnataka, *Karnataka Right of Children to Free and Compulsory Education Rules, 2012*; Government of Kerala, *Kerala Right of Children to Free and Compulsory Education Rules, 2010*.

57 *Modern School v Union of India* (2004) 5 SCC 583; See also, *Islamic Academy of Education v State of Karnataka* (2003) 6 SCC 697.

a self-declaration that a school is not run for profit, and this requirement has been adopted, in substance, by the vast majority of States through their RTE Rules and recognition frameworks.⁵⁸

- **Permitted School Promoters:** Most states require that private schools be established and maintained by non-profit entities such as registered societies, public charitable trusts, or Section 8 companies. The analysis states that, except for one state, all RTE rules limit promoters to non-profit forms. For example, Maharashtra and Delhi (among others) only recognise schools run by societies/trusts. However, there are exceptions as to Haryana and Uttar Pradesh: The Right of Children to Free and Compulsory Education Rules of 2011 in Haryana allow a broader range of promoters, such as individuals, firms, and companies not registered under Section 8, as provided under Rule 11(1)(b) of the *Haryana Right of Children to Free and Compulsory Education Rules, 2011*, read with the recognition provisions of the *Haryana School Education Rules, 2003*, to set up schools, provided they adhere to recognition standards and continue to follow the prohibition on profit-making.⁵⁹

In a similar vein, Uttar Pradesh updated its school recognition framework in 2022, under the Uttar Pradesh Board of High School and Intermediate Education (Recognition and Affiliation of Institutions) Regulations, 2022, permitting companies to establish secondary schools while officially maintaining the requirement that these institutions must operate on a non-profit basis.⁶⁰ Regardless, even in these cases, the non-profit requirement remains in force. The UP Board, when it allowed companies, emphasised that the company “shall not run a school for

profit”. Therefore, while Haryana and UP widen the varieties of legal entities that may establish schools, *no state law actually authorises a school to distribute profits to shareholders.*

- **Enforcement and Fees:** Beyond establishment rules, some states have further safeguards. For example, Punjab’s School Fee Act explicitly entrusts controllers to curb any fee hikes aspired to generate profit. But commonly, enforcement of the non-profit clause is through the recognition procedure as if a school fails to adhere to norms (including the profit ban), its recognition can be withdrawn. Supreme Court judgments underpin these rules by treating education as a charitable activity that may only make a “reasonable surplus,” not profit.⁶¹

As a consequence, *nearly all Indian states mandate private schools to be run not-for-profit.* State RTE rules comprise a “no profit” condition in different forms. No state authorises a school to run as a profit-making enterprise. Even where states like Haryana and Uttar Pradesh authorise non-trust entities (companies or individuals) to establish a school, the school still must operate under the same non-profit conditions. In practice, this means Indian private schools can put forward fees and generate surplus, but legally all surplus must be ploughed back into the school, not paid out as profit.⁶²

58 Ministry of Human Resource Development, *Model Rules under the Right of Children to Free and Compulsory Education Act, 2009*, r 11(1)(b); see also State RTE Rules adopted thereunder.

59 Government of Haryana, *Haryana Right of Children to Free and Compulsory Education Rules, 2011*, r. 11(1)(b); Government of Haryana, *Haryana School Education Rules, 2003*.

60 Government of Uttar Pradesh, *Uttar Pradesh Board of High School and Intermediate Education (Recognition and Affiliation of Institutions) Regulations* (as amended 2022)

61 Punjab Regulation of Fee of Unaided Educational Institutions Act 2016; See, *TMA Pai Foundation v State of Karnataka* (2002) 8 SCC 481; *PA Inamdar v State of Maharashtra* (2005) 6 SCC 537.

62 See, *Mohini Jain v. State of Karnataka* (1992) 3 SCC 666; *Unni Krishnan, JP v. State of Andhra Pradesh* (1993) 1 SCC 645; *TMA Pai Foundation v. State of Karnataka* (2002) 8 SCC 481; *PA Inamdar v. State of Maharashtra* (2005) 6 SCC 537.

State/UT	Permissible Entity Types	Explicit Profit Ban?	Key Compliance Notes
Andhra Pradesh	Registered Society or Public Trust	Yes	Must meet RTE norms; audited accounts; 25% EWS/DG seats
Arunachal Pradesh	Society/Trust (non-profit)	Yes	RTE reservation, norms compliance as recognition needed
Assam	Registered Society or Public Trust	Yes	Must fulfil all RTE conditions and no capitation fee
Bihar	Registered Society or Public Trust	Yes	Norms compliance; audited accounts; 25% reserved seats
Chhattisgarh	Society/Trust (non-profit)	Yes	Subject to RTE recognition and reservation rules
Delhi (NCT)	Registered Society or Public Trust	Yes	Full RTE compliance; audited accounts with 25% quota
Goa	Registered Society or Public Trust	Yes	Must meet RTE norms and recognition under RTE rules
Gujarat	Society/Trust or Sec.8 Company (non-profit)	Yes (not explicit)	RTE norms, 25% seats, capitation banned
Haryana	Society/Trust, Firm, Company (including non-Section 8)	Implicit (judicial)	Subject to SC ban on profiteering; permits diverse entity types but restricts surplus distribution.
Kerala	Society/Trust/Educational Agency	Yes	RTE norms, 25% reservations, audited accounts
Maharashtra	Society or Public Trust	Yes	RTE norms; 25% EWS/DG seats, strict audit/reporting
Manipur	Society/Trust (non-profit)	Yes	(Rules 2024) RTE norms, 25% quota, no profit allowed
Meghalaya	Society/Trust/Sec.8 Company (non-profit)	Yes	RTE norms, 25% EWS/DG admission, capitation banned
Mizoram	Society/Trust (non-profit)	Yes	RTE norms; 25% seats; no private profit use
Nagaland	Individual/Society/Trust (non-profit)	Yes (Board Affiliation, General Rules)	RTE Norms; 25% seats; recognition per RTE rules
Odisha (Orissa)	Society/Trust/Sec.8 Company (non-profit)	Yes (Model)	RTE norms, 25% reserved; capitation banned
Punjab	Society/Trust/Sec.8 Co (non-profit)	Yes (Model)	25% EWS/DG quota; fees regulated under RTE/Fee Act
Rajasthan	Society/Trust (non-profit)	Yes	RTE norms; 25% reservation; audited accounts
Tamil Nadu	Society/Trust/Sec.8 Company (non-profit)	Yes	RTE norms; 25% quota; no capitation fees
Karnataka	Society/Trust/Sec.8 Company (non-profit)	Yes	RTE norms; 25% EWS seats; no screening/capitation
Uttar Pradesh	Society/Trust (non-profit)	Yes	RTE norms; 25% EWS/DG seats; strict recognition rules
West Bengal	Society/Trust (non-profit)	Yes (state Act and Board Affiliation)	RTE norms; 25% EWS/DG seats; audited accounts

Apart from this, affiliation by-laws also reinforce the not-for-profit requirement. For instance, the CBSE⁶³ and CISCE⁶⁴ affiliation rules mandate that schools be governed by societies, trusts or non-profit companies and “*must not be run for profit*”. Therefore, both the

Constitution as interpreted by courts and the RTE regime assure that recognised private schools operate on a non-profit basis, in keeping with the scheme’s egalitarian objectives.

Legal Implications

Does the Constitution explicitly prohibit for profit schooling?

Although the constitution does not strictly compel schools to run not for profit, it considers school education as a public good. Article 21-A of the Constitution, introduced by the 86th Constitutional Amendment, guarantees free and compulsory education for children aged 6 to 14, and the Supreme Court has always interpreted it to treat education as a right rather than a commercial service.⁶⁵

While the Constitution does not explicitly proscribe for-profit schooling, judicial reluctance to legitimise it flows from India’s constitutional commitment to a welfare State and the Preamble’s objectives of justice, equality, and dignity, which cast school education as a core public function rather than a market commodity.⁶⁶ This judicial posture arises from a constitutional interpretation that treats school education as a sovereign function, central to the right to life and dignity under Article 21 and the entitlements under Article 21-A.⁶⁷ Even in the absence of a formal constitutional prohibition, the non-profit mandate has become deeply entrenched in legal doctrine through sustained judicial construction.⁶⁸

Constitutional Argument in favor of for-profit schooling

One equality-based argument under Article 14 is that the current not-for-profit regime may result in differential treatment in the expectations that private schools are required to fulfil vis-à-vis government schools. This differentiation, on one hand, can be justified by reference to the unique constitutional character of school education. Unlike most other sectors, school education is constitutionally mandated as a compulsory public function under Article 21A, which warrants a distinct regulatory approach. Hence, the classification of school education as a sector subject to heightened regulation satisfies the intelligible differentia requirement under Article 14, given its compulsory nature and its central role in discharging a core public function. However, the rational nexus between imposing a rigid non-profit mandate on private schools and the constitutional objective of universalising education is more complex and open to question.

63 CBSE Affiliation Bye-Laws (2020), cl 2.4.

64 CISCE Rules for Affiliation, Rule 3 (vi).

65 Constitution of India, art. 21-A; The Constitution (Eighty-Sixth Amendment) Act, 2002; *Unni Krishnan, J.P. v. State of Andhra Pradesh*, (1993) 1 SCC 645; *Mohini Jain v. State of Karnataka*, (1992) 3 SCC 666.

66 Constitution of India, Preamble; arts. 38, 45.

67 Constitution of India, arts. 21, 21-A; See, *Mohini Jain v. State of Karnataka*, (1992) 3 SCC 666; *Unni Krishnan, J.P. v. State of Andhra Pradesh*, (1993) 1 SCC 645.

68 See, *T.M.A. Pai Foundation v. State of Karnataka*, (2002) 8 SCC 481; *Modern School v. Union of India*, (2004) 5 SCC 583; *P.A. Inamdar v. State of Maharashtra*, (2005) 6 SCC 537.

If state laws allow for-profit schooling does that overstep or violate the RTE Act?

RTE Act establishes a standardised national framework for elementary education. Section 19 of the RTE Act stipulates that, for a school to secure recognition, it must adhere to the norms and standards stated in the Schedule to the Act.⁶⁹ The Schedule is silent on how schools have to operate financially. However, Rule 11(1)(b) Central Model Rules indicates that schools be run as a not-for-profit entity.⁷⁰

Although most states have adopted the Central Model rules in substance, they are not bound by the Model rules provided they do not deviate from the parent statute.⁷¹ Model rules are only indicative in nature, and can be used for reference by the states.

The states derive their rule-making power from the RTE

Act, which under 38 confers rule-making authority to state governments. Under this section, clause (h) states that rules can make rules regarding the conditions for issuing a certificate of recognition. Since, RTE Act does not restrict states from setting conditions for recognition, states can freely choose to allow even companies and sole proprietors to start a school.

Hence, Haryana's RTE Rules (2011), in Rule 11(1)(b), which permit "an individual, association of individuals, firm, company, or society" to institute a school encompassing private firms or non-Section 8 companies that are fundamentally profit-oriented, and Uttar Pradesh's revised norms from 2022 that allow private companies to launch secondary schools, again subject to a general clause stating "the school shall not run for profit are legal"⁷². These articulations broaden the range of legal entities permitted to manage schools, which appears to be in compliance with the RTE Act.

Conclusion and Way Forward

Private schools are vital to the delivery of quality education. Yet, they are governed by a legal framework that allows them limited opportunities for sustainable, and transparent functioning. The analysis in this paper indicates that this tension is not accidental but is structurally entrenched because of the way Indian law conceptualises education.

At a foundational level, our constitution's philosophy regards education as a public good, which is both normatively compelling and historically justified. By means of Directive Principles, Article 21-A, and Supreme Court jurisprudence, our farmer's vision of education serving an egalitarian purpose is visibly echoed. This suggests that schooling must serve social justice, and human expansion rather than private proliferation. This is also reflected in our Constitutional aspirations through the Directive Principles of State Policy and the Preamble.

However, it does not explicitly advocate for profit education, which is more or more a judicial construct arising from general constitutional aspirations.

According to the judiciary, there is a sharp distinction between permissible private participation and impermissible profiteering. This normative position, grounded in dignity and equality, has shaped a regulatory regime that behaves toward schools as institutions of public trust and views profit extraction with deep suspicion.

Nevertheless, the examination indicates that this doctrinal clarity at the level of principle has not translated into coherence at the level of institutional design. This is because the legal framework has imposed a rigid non-profit mandate without offering a workable explanation of permissible surplus or a transparent pathway for financial sustainability. The result is a system that

69 Right of Children to Free and Compulsory Education Act, 2009, s. 19, sch.

70 Ministry of Human Resource Development, *Model Rules under the Right of Children to Free and Compulsory Education Act, 2009*, r. 11(1)(b).

71 Right of Children to Free and Compulsory Education Act, 2009, s. 38.

72 Government of Uttar Pradesh, *Uttar Pradesh Board of High School and Intermediate Education (Recognition and Affiliation of Institutions) Regulations* (as amended 2022).

mandates public functions from private actors while repudiating their legitimate economic instruments to discharge those functions effectively.

The statutory and regulatory mapping undertaken in this paper also substantiates that, across India, private schools are formally instructed to operate on a non-profit basis, irrespective of ownership form. Even in states such as Haryana, where broader legal entities are authorised to establish schools, behavioural non-profit obligations remain unchanged because of informational gaps and regulatory risks.

This uniformity of law in form conceals substantial inconsistencies in enforcement and the underlying economic impact. Discretionary oversight, and ambiguous standards of “no profiteering” have elicited regulatory uncertainty rather than discipline.

Taken together, these conclusions do not suggest that India’s constitutional commitment to non-commercial education is misguided. Rather, they demonstrate that the present regulatory framework has failed to harmonise that commitment with contemporary educational existences. The Supreme Court’s own jurisprudence already contains the seeds of a more balanced approach that the consistent recognition of “*reasonable surplus*,” institutional autonomy, and the necessity of private capacity. What is missing is a regulatory architecture that gives effect to these principles in a clear, predictable, and transparent manner.

Recent judicial developments have provided much-needed clarity to the doctrinal apprehension surrounding “profiteering” in school education. By recognising that private unaided schools, as an occupation under Article

19(1)(g), may generate reasonable returns on investment subject to regulatory oversight to prevent capitation fees and commercialisation. This contemporary articulation reinforces the constitutional case for regulatory models that focus on transparency, accountability, and the prevention of exploitation, rather than rigidly suppressing all surplus generation.

The way forward, therefore, does not lie in abandoning education’s public character, but in reanalysing how that character is institutionally secured. A regulated for-profit framework carefully planned to prohibit capitation fees, exploitative practices, and exclusion, while permitting transparent returns subject to disclosure and outcome-based management offers a constitutionally defensible and economically rational alternative. Such a model would align incentives with quality, bring financial flows into the open, reduce regulatory arbitrage, and strengthen accountability. Crucially, it would allow the State to divert from intrusive input-based control toward principled regulation focused on access, equity, and learning outcomes.

In conclusion, India’s current procedure for private schooling reflects a moral aspiration constrained by institutional design. As the demand for quality education continues to outpace State capacity, maintaining a system that relies heavily on private provision while rejecting its financial legitimacy risks entrenching opacity, inequality, and inefficiency. A recalibration embedded in constitutional values, notified by judicial doctrine, and responsive to economic realities is not a withdrawal from social justice, but a necessary step toward realising it.

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