

Healthcare Law in the US and the RTE in India

Steps towards Universal Provision of Social Goods

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Earlier this year, the Supreme Court of India upheld the constitutional validity of the Right of Children to Free and Compulsory Education Act 2009 and the Supreme Court of the United States likewise upheld the Patient Protection and Affordable Care Act, 2010. The two pieces of legislation attempt to expand, to a greater or lesser degree, the provision of education and health services, respectively. This article attempts to understand and evaluate the policy debates and legal decisions around the two Acts as attempts by two constitutional liberal democracies to clarify the relationship between the state and private sector, and their respective roles and responsibilities to secure social welfare.

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Introduction

On 9 July 2012, the United States Supreme Court narrowly upheld¹ the constitutionality of the Patient Protection and Affordable Care Act, 2010 (hereafter ACA) more commonly known as Obamacare. Predictably, a torrent of commentary followed which tried to parse the motivations for and the implications of the decision. The comments range from the predictably overblown right-wing rhetoric predicting the impending destruction of American exceptionalism² to elaborate evaluations of the political ramifications for the upcoming presidential election. us Chief Justice Roberts' surprise decision to uphold the ACA has emerged as a significant focus of political and legal scrutiny.³

On 12 April 2012, the Supreme Court of India in *Society for Unaided Private Schools of Rajasthan vs Union of India*⁴ upheld the constitutional validity of the Right of Children to Free and Compulsory Education Act 2009 (hereafter RTE). The Indian debate on the judgment has been more modest⁵ and approving. Even critics of the Indian government policy on education have accepted the judgment with mild criticism.⁶ However, much like the ACA decision the Indian Supreme Court's RTE decision is likely to shape the future direction of the Indian welfare state.

In this article we understand and evaluate the policy debates and legal decisions discussed above as attempts by two constitutional liberal democracies to clarify the relationship between the state and the private sector and their respective roles and responsibilities to secure social welfare. A comparison between healthcare in the us and education policy in India may not satisfy some

desirable criteria for a two-country comparison: we focus on different policy outcomes in two countries at divergent levels of development with different political and bureaucratic systems to deliver social welfare. However, at a slightly higher level of abstraction two very different countries have reached similar policy arrangements as a result of these Supreme Court decisions.

In both cases there was an attempt at reconfiguring the role of the private sector to take on some responsibility of welfare provisioning (albeit with different motivations). In both cases, these goods were being provided in a sharply dualistic and entrenched system, with very few genuine quality options for the vulnerable who did not have access to healthcare (in the us) or education (in India). Accordingly a compromise was worked out that allowed key elements of the existing systems to remain unchanged while trying to advance inclusion and expand coverage. In both cases these compromises were challenged as unconstitutional and imposing positive obligations on private actors to promote welfare. In both cases, the laws were upheld in the highest courts despite several unresolved ambiguities. Finally, in both cases, the immediate focus has been on the implications for the rights of private actors, whereas perhaps the long-term impact of these acts is that they have laid down a marker that the universal availability of high quality social goods is an enforceable obligation whose burden will be met and will be shared between the public and private sectors. So this essay seeks to compare the two cases intensively to highlight similarities and differences between these countries rather than the analytical relationships between chosen variables.⁷

A useful outcome of this comparison is that it allows us perhaps to highlight the ways in which the room to experiment with institutional innovations is circumscribed by the history, politics and state capacities for provisioning of social welfare. In Section 1, we analyse the distinctions and commonalities in the policy environment and background debates that inform the legislative intervention. In Section 2, we analyse the two Supreme

Court challenges and identify the doctrinal basis for the conclusions in each case. The concluding part of this article outlines policy ambiguities and implementation challenges that remain.

1 Failures of Provisioning and the Genesis of the Reforms

1.1 ACA and Its Genesis

The us healthcare system has a distinctly dualistic character in terms of coverage. On the one hand, those who possess good insurance – typically as a part of a formal employment package – have reasonable and accessible care available, although the premiums for this healthcare have been rising substantially over the last few decades. For those without jobs or between jobs, however, insurance can be cripplingly expensive to purchase on one's own and as a result huge numbers of Americans (a common estimate is 50 million, or about 25% of non-elderly adults)⁸ are without healthcare for substantial periods of time. Once this occurs individuals become disconnected from the healthcare system, avoiding medical service and standard screenings for cancer, heart disease, which leads to poorer health outcomes. Furthermore, as costs of healthcare rise – itself a vexed fact – private insurance firms have rationed healthcare in arbitrary and complex ways that often means that even those who have health insurance find themselves unable to access some critical health services.

These facts reflect manifest failures of the private sector to ensure good healthcare for the entire citizenry, and have led successive us presidents – albeit with more urgency among Democratic leaders – to propose various overhauls to the system. While incremental changes have happened over the years – expansion of government healthcare to seniors and children being a prime example – this approach was seen widely as offering ineffective palliatives. Additionally modest reforms were perceived to benefit the politically connected private healthcare and insurance industry which had successively opposed large-scale reforms.

Following the election of President Barack Obama in 2008, for the first

time in decades, Democrats controlled all three branches of governments. However, the majority consisted of senators and congressmen and congresswomen with varying degrees of commitment to progressive goals and a large proportion of “blue-dog democrats”. This, in turn, meant that any law that was passed would need serious negotiation and political capital, especially when combined with a sharp tack to the right of the opposition. Nevertheless, the mandate was there to try and enact a law that attempted to expand coverage, while reducing costs and improving the healthcare delivery system. In order to do so a spectrum of approaches had been put forth over the years.

Single payer healthcare was perhaps the most radical of possible reforms for which the government would collect all healthcare fees and pay out all healthcare costs. The private sector insurance companies – perhaps the biggest beneficiaries of the current framework – would be eliminated and an insurance pool, run by the state and financed by taxes, employees and employers would fund healthcare. The cost savings from rationalising the costly administration of the current system would, it was argued, more than suffice to increase coverage for the majority of the population.

The public option was a second policy approach, that required active provision by the government but not the folding up of insurance into publicly-funded healthcare. The idea here was to provide a federally sponsored health insurance plan that would compete with private insurance companies but that promised to afford the uninsured a cheaper option by offering lower rates than private insurance companies. This it could do by using its leverage to negotiate lower prices from hospitals and pharmaceutical companies and by saving on administrative costs. While the public option was a smaller weapon to force needed competition into the private insurance market, it was viewed with equal concern by private sector insurance.

During the course of the debate, it became clear that the Obama administration put little political capital behind either of these approaches. While the

president had earlier claimed support for the idea of single payer health and universal healthcare, his speech to the joint session of Congress in September 2009 suggested a revision of opinion and a conviction that such an approach was too radical, and unlikely to garner enough political support.⁹ The public option, despite widespread support was something that the administration supported late in the negotiations and dropped quickly, partly as a result of the political calculus involved with the more conservative Democrats but partly because of negotiations with the political representatives of the for-profit health sector.

Once the two main options for direct government provisioning of health insurance were abandoned the only option was to find ways to expand coverage through the private insurance market. This meant adopting a method by which those outside the system of healthcare were brought into the market for the cross-subsidising effects of health insurance to work. In order to implement this, the government pivoted towards adopting a policy that would take on an approach, key elements of which originated with the political Right – the Heritage foundation in 1989¹⁰ – and that was largely adopted by Mitt Romney when he was the governor of Massachusetts.

The plan that was finally adopted left the existing system largely in place but tried to expand coverage. The compromise that was adopted was complex, but involved some key features. First, the adoption of a controversial “individual mandate” which required us citizens and legal residents to have health insurance or to face a penalty; second a wide range of subsidies and tax credits for the poor; third, to expand public and employer contributions to insurance.¹¹ Despite the incremental and even right-centrist approach, the law passed the house narrowly in 2010 and many opposed it as an unprecedented expansion of government powers.

1.2 RTE and Its Genesis

The failures of the existing educational system in India hardly require reiteration. After over six decades of Independence,

the basic statistics on education make for dire reading. Illiteracy remains high at about 25% according to the 2011 Census, although functional illiteracy is almost certainly higher. While there has been some progress in terms of official enrolment, learning outcomes are poor as evidenced by several non-governmental organisation reports.¹² The often talked about ills of education in India – teacher absenteeism, overextended teachers and infrastructure, poor systems of payments, poor quality of teaching and so on – remain pervasive.

The multilayered school system that developed is both a cause of and response to this vicious state of affairs. The primary responsibility for school education is with the state government. The union government has established high quality public institutions such as the Kendriya or Navodaya Vidyalayas which are not available to the vast majority of the population. More recently, the union government has funded a major part of state education expenditure through the Sarva Shiksha Abhiyan mission. While the state school system educates nearly 80% of the student population, the remaining 20% of the students are educated in private institutions which may or may not receive state aid. The private education system includes an elite highly selective school system which excludes a vast majority of the population and a low cost segment which attracts several parents dissatisfied with the state school system.

The problem of an uneven, unfair and inadequate provision of education has been recognised for a long time, with perhaps the most radical reform being suggested by the Kothari Commission of 1964-66¹³ and the promotion of the Common School System based on Neighbourhood Schools (CSS-NS). Such a reform would perhaps have most readily been implementable in the 1970s, after which the middle class and upper class decamped in what Anil Sadgopal has called “The Grand Escape”¹⁴ from public to private schools.

As of 2007-08, statistics quoted by the Supreme Court suggested that 80.2% of elementary schools were government-run, with about 13.1% being private

unaided schools. The growth and entrenchment of the private educational system, especially among the elite has meant that any serious radical reforms was bound to meet with some resistance from the sector. Moreover, as is evident from more recent observation, particularly the ASER report of 2011 and Narayan (2010),¹⁵ the poor have been exiting the public system in droves in favour of private education. These facts suggest two approaches – first, to strongly expand the quality and scale of the public education system and second, to ensure that those entering the private school system have access to good private schools.

While civil society groups criticised the failings of the education sector through the decades following the Kothari Commission, the issue of education for all received scant government attention. Education for all remained a directive principle till the 1993 Unnikrishnan judgment that elevated primary education to the status of a fundamental right. Drawing upon this judgment, various governments pushed towards a constitutional amendment that secured education as a fundamental right (the 86th amendment, passed in 2002).

Following this, perhaps the most significant act came with the introduction of the Right to Education Bill which sought to create an enforcement for primary education for all and to utilise the language of rights for the first time in so doing. The bill itself went through some negotiation before becoming the Right to Education Act in 2009 which specified several inputs that were necessary for the successful implementation of the goals envisioned. These involved significantly greater expansion and provisioning by the government, but also added elements that involved a reconfiguration of the role of the private sector. Perhaps most contentious was the idea of the retention of a 25% neighbourhood quota for children of disadvantaged groups in private schools as a method of social inclusion. This meant, in turn, that in practice the State must be involved, partially at least, in some of the regulation of the school. The implications of these reconfigurations led directly to the Supreme Court challenge.

2 The Question of Legality

2.1 ACA and the Constitutional Challenge

Almost immediately after its enactment by President Obama the ACA was challenged in the courts on the grounds of constitutionality. The constitutional challenges focused on two issues: first, the individual mandate to maintain minimum essential health insurance coverage. A failure to secure such coverage by 2014 results in a penalty to be paid along with an individual's taxes. It was argued that the individual mandate does not fall within the Congress' power to exercise the power to regulate commerce and that it does not fall within Congress' power to “lay and collect taxes”. Second, the Act expands the Medicaid programmes run by the states to include all adults with incomes up to 133% of the federal poverty line supported by additional federal funding. However, states that fail to comply with this requirement stand to lose all their federal Medicaid funding. This part of the Act was challenged on the grounds that it went beyond Congress' power under the “Spending Clause”, as it compels states to accept the Medicaid expansion.

A majority of the Court concluded that the expansion of Medicaid under the Spending Clause went beyond the system of federalism in the US. In particular they took the view that the expanded Medicaid programme did not alter or amend the existing programme but radically overhauled it. Hence, the Court concluded that it would excise the penalty on states but retain a voluntary option to expand the programme. The sharp division of the Court is with respect to the constitutionality of the individual mandate. Chief Justice Roberts' decisive opinion took the view that the individual mandate compels individuals to become active in commerce by purchasing a product. He agreed with the petitioners that the individual mandate went beyond the Commerce Clause to allow Congress to regulate what people do not do, thereby opening up a wide new jurisdiction and going beyond the constitutional vision of a government with limited and enumerated powers.

However, he concluded that the penalty imposed on those who fail to satisfy the individual mandate may be reasonably construed to be a tax. By choosing to interpret the penalty constructively as a tax the plural majority upheld the constitutionality of the Act.

Chief Justice Roberts' controlling opinion¹⁶ upholds the ACA by construing the individual mandate to be a tax. Chief Justice Roberts justified his conclusion relying on the proposition that "every reasonable construction must be resorted to, in order to save a statute from unconstitutionality".¹⁷ Both supporters¹⁸ and critics¹⁹ of the ACA agree that such judicial deference is uncharacteristic of Chief Justice Roberts and notably he agrees with the dissenting judges of the Court on all other substantive constitutional questions before the Court. Nevertheless, most commentators commended Chief Justice Roberts for enhancing the reputation of the Court²⁰ by breaking its political gridlock.²¹

2.2 RTE and the Constitutional Challenge

On 12 April 2012, the Supreme Court of India in *Society for Unaided Private Schools of Rajasthan vs Union of India* upheld the constitutional validity of the Right of Children to Free and Compulsory Education Act 2009. Several private schools (aided, unaided, minority and non-minority) had challenged the constitutionality of the Act on two major grounds: first, that the Section 12(1)(c) obligation on private unaided schools to provide free and compulsory education to children from weaker and disadvantaged sections up to 25% of the class strength and various provisions of the Act which imposed infrastructural and regulatory requirements on the schools violated their Article 19(1)(g) constitutional right to freedom of occupation. Second, minority schools argued that the Act violated their special constitutional rights in Article 30(1) to establish and administer educational institutions.

Chief Justice Kapadia speaking for the majority upheld the constitutional validity of the Act so far as it applied to private non-minority schools and aided minority schools. However, he held that

the entire Act of 2009, including the Section 12(1)(c) quota, would not apply to unaided minority schools. Justice Radhakrishnan's dissent held the Act to be uniformly applicable to minority and non-minority schools but read down Section 12(1)(c) so far as it imposed a positive obligation of providing free and compulsory education on all private unaided schools.

The divided opinion of the court arises out of the relative priority accorded to apparently conflicting rights and values in the Constitution. The majority concludes that the Article 21A right to education, derived from the Article 21 guarantee of the right to life, may subordinate the Article 19(1)(g) right to freedom of occupation. Further, the regulatory power of the state to impose reasonable restrictions under Article 19(6) draws support from the directive principles of state policy that mandate universal education and protection of children's interests. However, the majority concludes that the interests of minority groups protected under Article 30(1) read with the bar on reservation in Article 15(5) are absolute in character and trumps the Article 21A right to education. If the Article 21A right to education may subordinate Article 19 civil rights and freedoms why does it not subordinate minority rights under Article 30(1)? The majority does not offer a convincing justification for this view and its reliance on precedent is inconclusive.

The minority opinion develops a more symmetrical view of the balance between rights. It concludes that Article 21A right to education subordinates both Article 19(1)(g) freedoms of school administrators and Article 30(1) freedoms of minority school administrators. However, it concludes that Article 21A right to education is a limited right that creates exclusively a state obligation which cannot be imposed as positive obligations on private schools. While Justice Radhakrishnan considered the arguments regarding the horizontal application of rights in great detail and expressly rejected this argument, Justice Kapadia's majority view on the capacity of the state to impose positive obligations on private actors to promote

welfare accepts the horizontal application but in an inarticulate manner.

The judgment of the Supreme Court has been generally welcomed as a significant effort towards achieving social equity²² and a contribution to nation-building.²³ However, the exclusion of minority schools from the application of the Act by holding that part of the Act unconstitutional may leave out an influential segment of school providers from the Act's mandate.²⁴ As many state governments are yet to devise rules on the identification of minority schools²⁵ there is little clarity on the scope and extent of this exclusion.

3 Implementation and Ambiguities

3.1 ACA

In the US despite the ruling, at the current juncture, several relevant questions remain about the implications of the ACA. While it is too early to say how these will be resolved, it may be useful to point out some of the areas in which there will certainly be future debate and public policy enactments. First, according to the Congressional Budget Office, the ACA will still leave about 20 million people uninsured when fully implemented.²⁶ There is a lack of clarity as to how insurance coverage will work for these individuals and how they will be brought into the system. A second major issue has to do with the changes in employer-provided health insurance that will become evident as a result of the law. One concern is that employers will reduce or eliminate insurance and force their employees onto subsidised public insurance while paying minimal penalties as a result. The consideration of penalties will certainly be approached again in the years to come. A third important question is the response of the states to the law. One provision – Section 1332 – suggests that states can devise their own plans for expanding coverage, perhaps allowing for single payer plans at the state level. Whether or not this will be taken up remains to be seen. Equally, some states may make use of the "opt-out" provision of the law and opt out of Medicaid expansion. This, in turn, will

substantially reduce the numbers of insured. Finally, there is the question as to how costs will be controlled in the long term – with little to no clarity as to the ways in which the current system will do so. Each of these points is likely to be debated in the years to come.

3.2 RTE and Implementation

The decision of the Supreme Court upholding the constitutionality of the RTE Act has spurred various states into action to implement the Act. In the last few months several states have notified their rules and begun regulating admission to, and accreditation of, schools. However, significant legal and policy challenges remain and these are likely to be resolved over several years.

The RTE Act has been criticised for its lack of focus on securing quality education with a regulatory emphasis on measuring inputs rather than outputs.²⁷ The majority opinion opens a small window to redress this imbalance in the Act as it casts a duty on state governments to ensure quality education and to “re-organise...(their) financial outflow...by weeding out the non-performing or under-performing or non-compliance schools receiving grant-in-aid...”. Hence, the capacity of state governments to implement the Act to ensure quality education will determine its success. Civil society groups will need to mobilise the grievance redressal machinery provided under the Act as well as the courts to secure quality education.

Second, the exemptions under the Act need to be closely monitored. Minority schools are exempted from the application of the entire Act and state governments need to develop a systematic rigorous method of identification of minority schools entitled to this benefit. While the RTE Act does not define minority schools, several other judgments of the Supreme Court have dealt with this question. The judgment calls upon state governments to frame rules to govern boarding schools – a category not mentioned in the Act. The manner in which state rules determine the scope and nature of these exemptions will have a significant impact on the outcomes of the RTE Act.

The 2009 Act institutes a universal legal commitment to provide free and compulsory education to all children between 6 and 14 years of age. This legislation initiates a new approach to social welfare in two important ways: first, it creates a universal entitlement and does not rely on targeting particular social groups marked by ethnic, religious or other identity markers. Second, it integrates the efforts of the state and non-state sectors to provide for welfare in order to build an inclusive and solidaristic society. The true significance of the Supreme Court’s decision upholding the constitutionality of the Act in both these respects is that it paves the way for similar reforms in allied fields like health and housing. Again, the extent to which the law allows for such additional changes and the ways in which authorities and the private sector respond to this will be the subject of ongoing debate.

4 Distinctions in Approaches

So far we have provided a narrative of the interesting parallels and similarities between two recent landmark cases on social good provisioning in the US and India, the comparison should not be overdrawn. In particular, two salient differences mark the debate in the two countries. First, the manner in which entrenched private interests defended their position varied vastly across the two polities. Second, the framing of the legal debate differs significantly, taking on a rights-based approach in India and a regulatory approach in the US.

In the US despite strong public support for reform, despite proof of successful government provision of healthcare in the form of Medicaid, Medicare and Veterans Healthcare and despite particularly strong support for increased government intervention in the form of a public health insurance option, the for-profit sector orchestrated a very successful campaign to minimise the enlargement of the public sector and to delegitimise the very idea of government provision of healthcare. Obamacare is now a pejorative in American discourse and despite the peculiar nature of the constitutional challenge and its rejection, the Republican Party has made its revoking

a central part of its platform. In India, by contrast, although the RTE provokes some sharp response among the middle classes, there is no political movement to work against the law. While some argue that the compromise is poorly thought out and reflects the further commodification of education,²⁸ when compared with the response of the for-profit healthcare sector response to the ACA, the resistance of the for profit education sector in India has been relatively weak.

The Indian legal debate on the constitutionality of the RTE Act has focused on securing the appropriate balance between competing rights and between fundamental rights and directive principles. So the courts have had to determine whether the right to education of a student should override the school owner’s right to freedom of occupation and, wherever applicable, the minority school owners right to establish and maintain an educational institution of their choice. The directive principles, which mandate that the state shall secure the equitable distribution of opportunity and resources, guide the court seeking a balance between conflicting rights. The evocative character of the rights discourse allows the student to emerge as the central focus of the Court’s moral attention thereby allowing scarce normative grounds for an argument against the right to education.

In the US Supreme Court, the healthcare decision is not understood as a rights question at all. Instead the legal argument rests on the jurisdiction of the Federal Congress under the commerce clause and the tax clause. The Court is called on to determine whether the ACA is a justifiable exercise of these powers and whether this exercise does not trespass on individual and state autonomy. Hence, this legal discourse takes away attention from the core policy objectives of providing healthcare and focuses on the distribution of state power in a federal constitutional system. Notably, the US Supreme Court judgment does not use the word “justice” even once unless there is a honorific reference to a judge! There is an enduring tradition in west Europe and the US to design social welfare around an insurance principle²⁹

rather than an explicitly rights-based moral argument. Chief Justice Robert's reconfiguration of the penalty on the individual mandate as a tax, may implicitly suggest an invocation of an insurance model of social welfare but on the whole, the judicial and doctrinal discourse is marked by the absence of these concerns in the area of healthcare.

Despite these differences, one critical point of similarity remains. Seen in the best light, both the ACA and the RTE Act – highly imperfect in genesis and detail as they are – make a symbolic commitment to redress significant failures to provide key social welfare services in the us and India. In both countries, the continued inability of society to provide these critical social goods reflects a failure of politics and institutional imagination. Given that these social goods have nevertheless been provisioned by the private sector, pragmatic and perhaps even somewhat ethically compromised laws try to secure better welfare outcomes without threatening existing power equations. No matter what outcomes are secured by these legislations, the high profile legal challenges to them ensure that they will emerge as normative baselines whose expressive value will shape future debates on social welfare. To the extent that these laws succeed in providing a minimum bar and ensure that these social goods are seen to be a genuine requirement for all, they will secure some element of political decency for their societies.

NOTES

- 1 *National Federation of Independent Business vs Sebellius* 567 US – (2012).
- 2 As an example, see the opinion of Karen Harned, the executive director of one of the petitioners. <http://www.foxnews.com/opinion/2012/06/28/supreme-court-upholds-obamacare-re-and-americans-have-lost-right-to-be-left-alone/>
- 3 For an optimistic account see Vikram David Amar and Akhil Reed Amar, "Roberts Reaches for Greatness", *LA Times*, 1 July 2012 (<http://www.law.yale.edu/news/15787.htm>) last visited on 25 July 2012.
- 4 (2012) 6 Supreme Court Cases 1.
- 5 S A Aiyar, "The Right to Education Threatens Education", *The Economic Times*, 25 April 2012 (http://articles.economictimes.indiatimes.com/2012-04-25/news/31399110_1_unrecognised-schools-private-schools-school-fees) last visited on 25 July 2012.
- 6 Manish Sabherwal "Right to Education Is the Right Thing for the Wrong Reason", *The Economic Times*, 23 April 2012 (<http://articles.economictimes.indiatimes.com/2012-04-23/>

- news/313871_22_1_dysfunctional-government-schools-private-schools-reservation-for-poor-students) last visited on 25 July 2012.
- 7 T Landman, *Issues and Methods in Comparative Politics* (Oxon 3rd ed) 28.
- 8 For example, the US Census (2011) reports this figure. See <http://www.census.gov/hhes/www/hlthins/data/incpovhlth/2010/highlights.html>
- 9 See http://www.whitehouse.gov/the_press_office/Remarks-by-the-President-to-a-Joint-Session-of-Congress-on-Health-Care/
- 10 See Heritage Backgrounded 777, July 1990, available at: http://s3.amazonaws.com/thf_media/1990/pdf/bg777.pdf. Last accessed on 26 July 2012.
- 11 For a comprehensive explanation of the law, see Kaiser Family Foundation (2012): "Summary of New Health Reform Law", available at: <http://www.kff.org/healthreform/upload/8061.pdf>
- 12 See for example, the ASER report for 2011 which vividly portrays the poor standards and the continued decline of standards in some areas, available at: http://images2.asercentre.org/aserreports/ASER_2011/aser_2011_report_8_2.12.pdf
- 13 For an extensive discussion of the CSS-NS idea and its development see Sadgopal 2008, "Common School System: Do We Have an Option?", available at: http://xa.yimg.com/kq/groups/8723444/635178191/name/CSS_Essay_Anil_16Sept08.pdf. Last accessed on 25 July 2012.
- 14 Anil Sadgopal, "Neoliberal Act", *Frontline*, Vol 28 – Issue 14, 2-15 July 2011.
- 15 Venu Narayan, "The Private and the Public in School Education", *Economic & Political Weekly*, Vol XLV, No 6, 6 February 2010.
- 16 Akhil Amar Reed points out that Chief Justice Roberts agreed with the conservative justices on every constitutional question before the Court. He agreed with the liberal judges only on the construction of the individual mandate as a tax. Hence, this opinion is better understood not as a 5-4 split but as a 4-1-4 split with Chief Justice Roberts opinion controlling the operation of other opinions. Ezra Klein, *The Political Genius of John Roberts* (<http://www.washingtonpost.com/blogs/ezra-klein/wp/2012/06/28/the-political-genius-of-john-roberts/>) visited on 25 July 2012.
- 17 *Hooper vs California* 155 US 648, 657 (1895).
- 18 Ronald Dworkin, "Why Did Roberts Change His Mind?", *The New York Review of Books Blog*, 9 July 2012 (<http://www.nybooks.com/blogs/nyrblog/2012/jul/09/why-did-roberts-change-his-mind/>)
- 19 Randy Barnett, "Roberts Decision Didn't Open Floodgates for 'Compulsion through Taxation'", *The Washington Examiner*, 5 July 2012 (<http://washingtonexaminer.com/roberts-decision-didnt-open-floodgates-for-compulsion-through-taxation/article/2501386>) visited on 25 July 2012.
- 20 Linda Greenhouse, "A Justice in Chief", *New York Times*, 28 June 2012 (<http://opinionator.blogs.nytimes.com/2012/06/28/a-justice-in-chief/?ref=opinion>) visited on 25 July 2012.
- 21 Charles Krauthammer, "Why Roberts Did It?", 25 June 2012 (<http://www.nationalreview.com/articles/304332/why-roberts-did-it-charles-krauthammer>) visited on 25 July 2012.
- 22 "Learning Curve", *Indian Express*, 13 April 2012 (<http://www.indianexpress.com/news/learning-curve/936084/o>) last visited on 25 July 2012.
- 23 "The Schools Are Now Open", *The Hindu*, 13 April 2012 (<http://www.thehindu.com/opinion/editorial/article3308066.ece>) last visited on 25 July 2012.
- 24 R Jagannathan, "RTE, but Why Minorityism?", *Firstpost.com* 13 April 2012 (<http://www.firstpost.com/india/sc-strikes-a-blow-for-inclusive-rte-but-why-minorityism-274672.html>) last visited on 25 July 2012.
- 25 Sudhir Krishnaswamy and Varsha Iyengar, "RTE Must be Extended to Minority Schools", *Deccan Chronicle*, 29 April 2012 (<http://www.deccanchronicle.com/channels/cities/bengaluru/rte-must-be-extended-minority-schools-also-796>) last visited on 25 July 2012.
- 26 <http://cbo.gov/sites/default/files/cbofiles/attachments/03-13-Coverage%20Estimates.pdf>
- 27 P B Mehta, "Classroom Struggle", *Indian Express*, 18 April 2012 (<http://www.indianexpress.com/news/classroom-struggle/937982/>) last visited on 27 July 2012.
- 28 See in particular, Anil Sadgopal op cit.
- 29 R Dworkin, "A Bigger Victory Than We Knew", *New York Review of Books*, 16 August 2012 (<http://www.nybooks.com/articles/archives/2012/aug/16/bigger-victory-we-knew/?pagination=false#fn-3>) last visited on 25 July 2012.

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