
An Analysis of Right to Education Act 2009

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Abstract: *Education is the most powerful tool which can shape the destiny of an individual as well as the whole nation. It is pity that our great nation failed to eradicate the menace of illiteracy even after 70years of independence. It was 86th constitutional amendment made by the parliament and article 21A in the year of 2002 which made Right to Education a fundamental right. This act bounds all the stakeholders like parents, schools, society, states as well as central governments to play their roles in order to provide free and compulsory education to the children between the 6-14 years of age. In India acts are framed but they are not implemented with the true spirit. This paper is based on the secondary data and analyzed the Right to Education act, 2009. In addition to this, it also highlights several challenges in the implementation of the act.*

Keywords: Right to Education, Free & compulsory, Elementary, Awareness, Implementation.

Introduction: Education is universally recognized as a major component of human development. Certain minimum level of education is essential for the development of population as human resources. At the global level, United Nations' International Covenant on Economic, Social and Cultural Rights. 1966 recognizes the right of everyone to an education. The word "education" is derived from the Latin word *ēducātiō* means "A breeding, a bringing up, a rearing" Education in its general sense is a form of learning in which the knowledge, skills, values, beliefs and habits of a group of people are transferred from one generation to the next through storytelling, discussion, teaching, training, and or research. Education may also include informal transmission of such information from one human being to another. But

academic Education refers to acquisition of intellectual and moral training.

Changing Perspective of Education in India:

In India the importance of education was recognized long back. Till the nineteenth century, education in India was an exclusive right available only to a small section of society¹. Under British rule, in spite of compulsory education laws, not much progress was made in this direction. Post-independence, Article 45 of the newly framed Constitution stated that "the State shall endeavor to provide within a period of 10 years from the commencement of the Constitution, free and compulsory education to all children until they complete the age of 14 years"². But nothing much happened towards universe salvation of elementary

education. National Policy on Education, 1968³ was the first official document which attested Indian Government's commitment towards elementary education. This was further emphasized in the National Policy on Education, 1986⁴.

In the review of the policy in 1990, it was recommended to include Right to Education as a fundamental right in the constitution, on the basis of which National policy on Education 1992 was formulated. In the meantime, India signed the UN Convention on the Rights of the Child (CRC), in 1992 and initiated the process of adopting legislation to make education a fundamental right of the child. Inroads in this direction were already made in 1976 through amendment to the Constitution to enable the Government at the centre to also make legislation for school education, the power for which until then, had solely been in the hands of the state governments⁵. In 1992 itself, in the case of Mohini Jain Vs State of Karnataka, the Supreme Court of India held that right to education is concomitant to fundamental rights enshrined under Part III of the constitution and that every citizen has a right to education under the constitution. Subsequently, in the case of Unnikrishnana, J.P. Vs State of Andhra Pradesh, the Supreme Court held that "though right to education is not stated expressively as a fundamental right, it is implicit in and flow from the right to life guaranteed under article 21 and must be construed in the light of the Directive Principles of the constitution. Thus, right to education, understood in the context of Article 45 and 41 means (a) every child/citizen of this country has a right to free

education until he/she completes the age of fourteen years and (b) after a child / citizen completes 14 years, his/her right to education is circumscribed by the limits of the economic capacity of the State and its development"⁶. Finally, in 2002, the amendment of the Constitution of India made education a fundamental right, but qualified it by adding that the manner of this right would be as determined by a follow up consequential legislation. This follow up legislation referred to in the 2002 Amendment of the Constitution of India (the Constitution 86th Amendment)⁷ is the 'The Right of Children to Free and Compulsory Education Act 2009'⁸, passed by parliament in August 2009, and notified into force in April 2010. Based on this Act, a subordinate legislation, the Model Rules, was framed by the centre to provide guidelines to states for implementing the Act⁹.

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

After crossing many barriers, the right of children to free and compulsory Education Act 2009 (RTE Act): was approved by the cabinet on 2 July 2009 and the Lok Sabha on 4 August 2009. It received Presidential assent and was notified as law on 26 August 2009. The Law came into whole of India except the state of Jammu and Kashmir from 1 April 2010. The Act makes education a fundamental right of every child between the ages of 6 and 14 and specifies minimum norms in elementary schools. It requires all private schools to reserve 25% of seats to children from poor families (to be reimbursed by the state as part of the public-private partnership plan. The new statute makes it obligatory for state governments and local

bodies to ensure that every child receives an education in a neighborhood school. The Act's implementation should directly benefit close to ten million children who do not go to school at present. In this Act there have 7 Chapter and 38 Articles which shows the main provisions of this act¹⁰.

Following features provide the basis of implementation of the RTE Act, 2009:

- ❖ The act effect in the whole of India except the state of Jammu and Kashmir.
- ❖ Every child in the age group of 6-14 has the right to free and compulsory education in a neighborhood school, till the completion of elementary education.
- ❖ Private schools will have to take 25% of their class strength from the weaker section and the disadvantaged group of the society through a random selection process. Government will fund education of these children.
- ❖ No seats in this quota can be left vacant. These children will be treated on par with all the other children in the school and subsidized by the State at the rate of average per learner costs in the government schools (unless the per learner costs in the private school are lower).
- ❖ All schools will have to prescribe to norms and standards laid out in the Act and no school that does not fulfill these standards within 3 years will be allowed to function. All private schools will have to apply for recognition, failing which they will be penalized to the tune of Rs 1 lakh and

if they still continue to function will be liable to pay Rs 10,000 per day as fine. Norms and standards of teacher qualification and training are also being laid down by an Academic Authority. Teachers in all schools will have to subscribe to these norms within 5 years.

- ❖ No donation and capitation fee are allowed.
- ❖ No admission test or interview either for child or parents.
- ❖ No child can be held back, expelled and required to pass the board examination till the completion of elementary education.
- ❖ There is provision for establishment of commissions to supervise the implementation of the act.
- ❖ A fixed student and teacher ratio is to be maintained.
- ❖ All schools have to adhere to rules and regulations laid down in this act, failing which the school will not be allowed to function. Three years moratorium period has been provided to school to implement all that is required of them.
- ❖ Norms for teachers training and qualifications are also clearly mentioned in the act.
- ❖ All schools except private unaided schools are to be managed by School Management Committees with 75% of parents and guardians as members.
- ❖ The RTE act requires surveys that will monitor all neighborhood's, identify children requiring education, and set up facilities for providing it. The

World Bank education specialist for India, Sam Carlson, has observed.

- ❖ The RTE Act is the first legislation in the world that puts the responsibility of ensuring enrollment, attendance and completion on the Government. It is the parents' responsibility to send the children to schools in the U.S. and other countries.
- ❖ The Right to Education of persons with disabilities until 18 years of age is laid down under a separate legislation- the Persons with

Disabilities Act. A number of other provisions regarding improvement of school infrastructure, teacher-student ratio and faculty are made in the Act.

- ❖ The Act provides for a special organization, the National Commission for the Protection of Child Rights, an autonomous body set up in 2007, to monitor the implementation of the act, together with Commissions to be set up by the states¹¹.

Comparative Analysis of Different Countries

	India	China	Germany	USA	Japan
Run by	State	State	State	State	Public/ Pvt.
Started	2010	1980	1982	1870	1947
Compulsory Period	8 Years	13 Years	10 Years	13 Years	9 Years
Age of Child	6-14 Years	6-19 Years	6-16 Years	5-18 Years	6-15 Years
System	Co-education	Co-education	Co-education	Co-education	Co-education
Articles	21A	19,24,46	3,5,6,7,9,19,91b	Human Right Act	Partial
Constitutional Promises	Yes	Yes	Yes	Yes	Partial
Similar Rules for Entire Country	Yes	Different in States	Different in States	Different in States	Different in States

www.comparitive difference of RTE in India, China, Germany, USA, Japan.

The above table clearly shows that among all these countries USA is the first one to make rules regarding the right to education of children and after that other countries have adopted this in the twentieth century. Rather it was started very late in India. In India, China, Germany and USA, this rule is governed by the state government but in Japan it is run by the public private collaboration. In addition to this, all these countries have given constitutional status to it and fixed the age of children to take elementary education but it varies country to country.

Challenges in Its Implementation:

A) Victims of trafficking- According to the National Crime Records Bureau, every year

around 65,000 children fall victim to trafficking. Only 10% of such cases are registered with the police. Trafficking in

female children is for the purpose of begging and prostitution and male children used for begging as well as labourers.

B) Not enrolled in the schools- These children have never been enrolled in school for several reasons like religion, poverty, social and gender discrimination. The parents also not show much interest in enrolling the children.

C) Dropped out from schools- Though these children are enrolled in the school, they may not complete their free and compulsory education level. After completing primary level education, they may be able to read and write. So the children and parents will think about earning money through work and not about their study.

D) Poverty-A hungry man thinks about earning food and not about education. The government provides with free education, mid-day meal and other nutrients to the children. But the Poverty faced by the family members compels the children to go for work. If they go to the school they alone be supported and if they go for earning jobs along with them their family is supported. In the opinion of one such child, during particular season they should earn as much as possible, and then they may not get any earnings. Once the season is over they are

going to school again. Thus the children from village area are going to school only if they are free.

E) Lack of Required Pupil-Teacher Ratio- According to the RTE Act, the pupil – teacher ratio in the primary level I 30:1. But in many places, there is very less number of teachers. As per a recent report by NUEPA, Bihar tops amongst the states having poor pupil-teacher ratio and Uttar Pradesh comes at second place. In about 35 percent primary schools in Uttar Pradesh, pupil teacher ratio is 60:1. apart from this the appointed teachers may not ready to work in some of the remote village or areas.

F) Lack of proper punishment- If there is no punishment then laws may not be useful. There is no severe punishment under RTE for some of the violation. For example: physical punishment to the children is prohibited under RTE. But even today in many schools physical punishments are given. The teacher who uses such physical punishment may not be punished. Just a Disciplinary Action may be initiated according to the service rules and finally if it is proved, then teacher may be transferred to another school.

G) 25% reservation in the private School- According to RTE, it is compulsory for every private unaided school to admit at least 25%

of its entry level class from children belonging to weaker and disadvantaged groups. For this category of students the state government shall reimburse schools an amount equal to either the fees charged by the school or the per child expenditure in state schools, whichever is lower.

H) Quality of education and teachers -

Section 23 gives power to the central government to prescribe qualifications for the teachers to various levels of education. In pursuance of this power Department of School Education and Literacy, Ministry of Human Resources Development, Government of India issued a notification dated 23rd August 2010 which prescribes minimum qualification for a person to be eligible for appointment as teacher in class I to VIII in all the school to which this Act applies. But the Act or Notification is not clear about the implementation of these provisions. If the qualification of a teacher is good then qualified education can be provided. Even though qualified teachers are appointed they may not be ready to work in the rural area. In some of the Schools in the rural area consists single teacher to the whole school. Lack of proper infrastructure facility is another reason for the teachers to refuse rural areas.

Suggestions to Make the RTE Act Effective-

- CSS (Common School System) was an essential step for attaining equality decades ago but now a day it should be changed into MSS (Model school system) based on the needs and demands of the society where education should be given free of cost and on private institute patterns.
- Parents need to play an important role to make RTE a major success in India. They should be motivated through counseling and made aware about the RTE Act through media, hoardings, pamphlets campaigns, rallies etc. only then we can ensure our better future generation.
- Provision for strict punishment regarding the violation of this Act should be made and the responsibilities of state government, central government, parents, teachers, and administrators, Owners of the school, children and society members should be fixed. It should be made mandatory for all the government employees; whether state or centre or person working under center or state sponsored agency, to send their children in government or government aided institutes.

- From the study we can see that medium of instruction in private schools is English and this is a huge barrier for the RTE children to comprehend what is being taught in classes. The school could conduct English classes for these children so that they learn the language and can cope with the classes. The school may take a nominal fee to cover a few costs.
- The government could provide funds to private schools who would like to take some extra classes after school hours for the RTE children to help them come to the level of the regular children in the class.
- The government should conduct training workshops to sensitize the school staff to the RTE children, understand their needs and help them cope with regular school system.
- A developing country like India needs to focus on providing good quality education for the children to go up to the level of the developed countries. The budget allocated for education in the annual budget is low. The budget allotted for education as a whole should be increased, specifically for the RTE policy implementation.

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