



## Right of children to free and compulsory education act 2009: A critical view

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### Abstract

Place of education in any society is a commonly acknowledged fact among all. Since independence, even prior to independence, in spite of making several provisions, India could not mark at satisfactory level so far as Universalization of Elementary Education is concerned. This paves the way to RTE Act, 2009 because Every human being is entitled to education which unlocks the human capacities and capabilities. The Right of Children to Free and Compulsory Education Act (RTE Act, 2009) has been implemented in the country since 1st April, 2010. All the educational functionaries at the Primary and Upper level such as teachers, teacher educators, Administrators, children and parents are to be sensitized on the Act as well as the issues and concerns of implementation of the Act.

**Keywords:** RTE, constitutional provisions and implementation

### Introduction

The Right of Children to Free and Compulsory Education (RTE) Act 2009 passed by the Indian parliament, mandates free and compulsory education of all children of 6-14 years age until they complete elementary education in a neighborhood school. The act has a provision for every child, who is above six years of age and has not yet been admitted to any school or could not complete his or her elementary education due to any reason, to be admitted in a class appropriate to his or her age. The child admitted under age-appropriate admission has a right to receive special training and additional instruction in order to be at par with other children of the class. However, there is an important concern over implementation of RTE Act in the school system with reference to the special training or instruction, its modalities and execution. The states and UTs are expected to respond to the situation arising out of the implementation of the act and required to pay special attention to cope up with the situation in terms of appointment of teachers, development of special training programs for out of school children admitted to age, appropriate class and preparation of relevant teaching learning materials for them. The RTE Act 2009 shall make an

arrangement to free and compulsory education for every child of India. To take elementary education facilities, is the fundamental right of every child and the state is directly responsible to provide elementary education infrastructure for children education to the age group of 6-14 years. The RTE Act 2009 is associated as Article 21A with the Article 21 of constitution of India, the fundamental right of life. RTE Act 2009 has places in article 21 because the Supreme Court of India has made a decision that the fundamental right of life is incomplete without Education, in 1993. Although the constitution of India has a provision to free and compulsory education already under Article 45 but it is a 'Directive Principles of State Policy' not as fundamental right.

### Need of RTE Act 2009

Indian constitution has already made an arrangement to free and compulsory education to age group of 6-14 years, under the Article 45 of constitution. Then, what initiated the need to form RTE Act 2009, included in Article 21A. Let us clear this conflict through a comparative table of Article 45 and Article 21A.

### Article 45 v/s Article 21A

Table 1

S. No	Article	Constitutional position	Accountability by governments.
1.	45 (Provision for free and compulsory education to 6-14 years old children. State will try to provide elementary education)	Directive Principles of State Policy.	Article 45 is included in Directive Principles of State Policy in constitution. Government is not accountable if it fail to fulfill any provision defined in "Directive Principles of State Policy", under any judiciary system.

2.	21 A (Right to life) In 1993 supreme court of India has been announced that the right of life is incomplete without education.	Fundamental Right of a Citizen.	Article 21-A is included in fundamental rights of a citizen. Government is fully accountable in judiciary system to fulfill all the provisions of fundamental rights and anybody may go in shelter of judiciary for his right.
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### Historical background of free and compulsory education in India

The Right of Children to Free and Compulsory Education (RTE) Act 2009 shall cover the elementary education for 6-14 years old children of India. The Act has come in effect from April 1, 2010 in all the states of India except Jammu & Kashmir. There are only few countries in the world, where the national arrangement of free and compulsory education is implemented. On this point of view this act is a milestone for India to achieve millennium development goals. In the historical point of view of free and compulsory education there has been taken many steps time to time. The brief history of these steps is as follow

#### ▪ Act of Britain for free and Compulsory Education (1870)

Firstly in the world, an Act was passed in Britain for free and compulsory education, and on the basis of this act Mahatma Jyotiba Phule made an appeal in 1882 to Hunter Commission for free and compulsory education to the every child of India also.

#### ▪ Gokhale's Proposal to free and Compulsory Education (1910-11)

Gopal Krishan Gokhale also tried to pass a bill in Imperial Legislative Assembly for free and compulsory education to the children for British India but failed.

#### ▪ Mahatma Gandhi's idea in Vardha (1937)

Again in 1937 Mahatma Gandhi serve an idea before 'Rashtriya Shiksha Parishad' but Parishad rejected the proposal due to lack of economic resources.

#### ▪ Constitution Assembly in 1948-49

The question to free and compulsory education also raised toward the constitution assembly but the Assembly put this issue under 'Directive Principles of State Policy' not in the category of fundamental rights. Free and compulsory education is placed in constitution in Article 45 with a direction that the state will try to provide free and compulsory education till the age of 14 years, within the period of 10 years after constitution implementation.

#### ▪ Supreme Court Decision (1993)

The Supreme Court of India made a important decision in concern of educational arrangement in 1993, "The right of life is incomplete without education and it is a supreme duty of state to provide free and compulsory education for the age group 6-14 years."

#### ▪ 86<sup>th</sup> Constitutional Amendment (2002)

In 2002 Indian parliament passed a constitutional amendment and added a new sub article in article 21 as article 21A. So the issue of free and compulsory education took a form of fundamental right of elementary education to the age group 6-14 years.

#### ▪ Model Bill of RTE Act (2006)

In the next step to RTE Act there was set up a model bill to know the opinion and responses of various agencies, educationists and state governments.

#### ▪ Right of Children to Free and Compulsory Education Act 2009 (in final form)

After a long process of years at last the final bill come in existence on August 4, 2009 as the RTE Act 2009 and was published in the gazette of India on August 27, 2009. The RTE Act 2009 has come in effect from April 1, 2010. Now it is a constitutional duty of every state to provide free and compulsory education to every child age group of 6-14 years old.

#### Various Important Provisions in RTE Act 2009

The Right of Children to Free and Compulsory Act 2009, is a extra-ordinary Act in the field of Indian elementary education system. The Act is divided mainly into seven separate chapters. Every chapter is related with some types of special duties and rights of various agents related to child education. The chief provisions of Act are as following-

#### 1. Right of a Child

There are following rights of a Indian child mention in RTE Act 2009

- Every child of the age of 6-14 (6-18 in case of children with special need) has a fundamental right to free and compulsory education in a neighborhood school till completion of his or her elementary education.
- Equal opportunities, protection and full participation shall be provided to a child suffering from disability.
- No child shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing the elementary education.
- Child above six years of age has not been admitted in any school or through admitted could not complete elementary education, then he or she shall be admitted in a class appropriate to his or her age and has a right to receive special treatment or training.
- Where in a school, there is no provision for completion of elementary education, a child has right to seek transfer to any other school, excluding the school certificate.
- For seeking admission in such other school, the head teacher of the school where such child was last admitted, shall immediately issue the transfer certificate and no school can deny to admission on the base of no transfer certificate in case of late issuing.

#### 2. Duties of appropriate government and local authority

- It is a duty of government and local authority to establish neighborhood schools, where are not so establish, within a period of three years from the commencement of this act.

- The central and the state government shall have concurrent responsibility for providing funds for carrying out the provisions of this Act.
- The central government shall prepare the estimates of capital and recurring expenditure for the implementation of the provisions of the Act.
- The central government shall be fully responsible to develop a framework of national curriculum with the help of academic authority, standards for teachers training, technical support and resources to the state government.
- Appropriate government will ensure good quality elementary education, attendance of teachers and students, school building, teaching staff, equipments curriculum and training facility for teachers.

### **3. Duties of local authority**

- Local authority shall provide free and compulsory education to every child.
- To ensure availability of neighborhood schools, maintain record of children up to age 14 years, monitor admission, attendance, availability of infrastructures, teaching staff and learning material.
- To ensure good quality elementary education conforming to the standards and norms specified in the schedule.
- To ensure admission of children of migrant families and deciding the academic calendar.

### **4. Duties of Parents and Guardian**

- It shall be the duty of every parents or guardian to admit or cause to be admitted his or her child or ward, as the case may be, to an elementary education in the neighborhood school.

### **5. Responsibilities of school and teachers**

- School shall provide free and compulsory elementary education to all children admitted there in.
- The school shall admit the child in class 1<sup>st</sup>, to the extent of at least 25 % of the strength of that class, children belonging to weaker section and disadvantaged group in the neighborhood and provide free and compulsory elementary education till its completion.
- Every school shall provide all the information as may be required by the appropriate government and the local authority, as the case may be.
- Any school shall not organize screening procedure for admission and no collection of any capitation fee.
- No child shall be denied admission in a school for lack of age proof.
- No child admitted in a school shall be held back in any class or expelled from school till the completion of elementary education.
- No child shall be subjected to physical punishment or mental harassment.
- No school to be established without obtaining certificate of recognition.
- The teacher shall follow the rules and regulation mentions in the Act as regularity, punctuality and shall complete entire curriculum within the specified time.
- Teacher shall hold regular meeting with parents and guardians and apprise them about the regularity in

attendance, ability to learn, progress made in learning and any other relevant information about the child and perform such other duties as may be prescribed.

### **6. Qualifications for appointment and terms and conditions of service of teachers**

Any person possessing such minimum qualifications, as laid down by an academic authority, authorized by the central government, by notification, Shall be eligible for appointment as a teacher. Where a state does not have adequate institutions offering courses or training in teacher education, or teacher possessing minimum qualification as laid down under sub-section (I) are not available in sufficient numbers, the central government may, if it seems necessary, by notification, relax the minimum qualifications required for appointment as a teacher, for such period not exceed five years as may be specified in that notification.

### **7. Pupil-Teacher Ratio**

Within six months from the date of commencement of this Act, the appropriate government and the local authority shall ensure that the pupil-teacher ratio, as specified in the schedule, is maintained in each school. That is as follow-

1 <sup>st</sup> to 5 <sup>th</sup> class	-	1 teacher for per 30 students.
6 <sup>th</sup> to 8 <sup>th</sup> class	-	1 teacher for per 35 students.

### **8. Prohibition of deployment of teachers for non-educational purpose and private tuition by teacher**

No teacher shall be deployed for any non-educational purpose other than the decennial population census, disaster relief duties or duties relating to elections to the local authority or the state legislatures or parliament, as the case may be. No teacher shall engage himself in private tuition or private teaching activities.

### **9. The curriculum and evaluation procedure**

The curriculum and evaluation procedure for elementary education shall be laid down by an academic authority to be specified by the appropriate government curriculum will be prescribed with the values enshrined in the constitution. Curriculum should be for all round development of child and with child centered aspect. Comprehensive and continuous evaluation of child's understanding of knowledge and his or her ability to apply the same. No child shall be required to pass any board examination till completion of elementary education.

### **Implementation status of RTE Act 2009**

Right of children to free and compulsory Education Act 2009 has come in effect from April 1, 2010. But on the base of various surveys and research reports of RTE Act implementation, clear a view that many provisions of RTE Act 2009 are not completely implemented so far. Various information about implementation status of RTE Act 2009 are as follow:

#### **1. Reports of print media**

- **Times of India New Delhi dated June 30, 2012** brought out interesting fact, it reported that only 5% of the schools were following RTE guidelines as stated by

the convener of RTE forum. Additionally, there were problems, such as shortage of 1000000 teachers, untrained teachers in some places, Para-teachers and student-teacher ratio.

▪ **Hindustan Times Mumbai, September 01, 2013**

Empowered by the Right to Education (RTE) Act, a child with special needs can study in any mainstream school today. But unless class teachers are specially trained in handling and teaching such children, they will not be sensitive to their needs, say experts. Though a special educator is needed for autistics, visually challenged and hearing impaired children, even regular teachers need to be able to identify, involve and teach them in a way that they understand, say experts. However, the government has not yet introduced training for teachers in special education. Currently, teachers learn about special education through one module while studying for Bachelors of education (B.Ed.) or diploma in education (D.Ed.). This module neither teaches how to handle specific disabilities nor has any practical element.

**2. Dainik Jagran Bareilly, May 19, 2015**

A report was published in Dainik Jagran (Bareilly addition, Pravah) written by Seema Javed with a brief view of basic education that “RTE Act has come in effect April 1, 2010. There are wide instructions about curriculum development, training of teachers and student-teacher ratio in the Act. Five years to RTE implementation has passed, but 6000000 children are out of school even now. Mostly these are of schedule caste (32.4 %), schedule tribes (16.6%) and Muslims (25.7%). The government has decided a time line of March 31, 2015 but today only 8% schools follow the rules of RTE Act 2009 completely. The 50% student studying in schools, get leave the school before completing their secondary class. The main cause of this drop out is lacking of education fund. Kothari commission had made a recommendation 6% part of GDP”.

**3. Reports of various institutions and agencies**

▪ **Report of PISA (Program for International Student Assessment) 2012**

In the evaluation process of 73 countries by PISA, India stands on 72th position. PISA evaluate the mental power of children of OECD (Organization of Economic Co-operation and Development) countries, PISA not only assist it but organizing and controlling also. PISA established in 1997 firstly it started evaluate children in 2000. The aim of PISA is intellectual evaluation of children on the ground of science and mathematics learning capacity and to assess teaching system of belonging countries.

▪ **Report CRY (Child Rights and You) 2012**

According to Director (Policy and Advocacy), CRY, Vijaylakshami Arora “There have been gross violations of several provisions of the Right to Education Act over the last two years. The irony is that several states are yet to put even the monitoring mechanism, stipulation the RTE Act, in place; so we do not even know the exact extent of violations of the provisions of this Act.” So far only 14 States have notified the formation of State Commission for Protection of child Rights (SCPCR).

▪ **Report of ‘PRATHAM’ as ASER (Annual Status of Education Report) 2014**

The report of ASER 2014 was released by ASER partners and board members of PRATHAM (An Educational NGO). The key findings of ASER report 2014 are following-

- a. 2014 is sixth year in a row that enrolment levels are 96% or higher for the 6-14 age group. The proportion of children currently not in school remains at 3.3%.
- b. India is close to universal enrolment for the age group 6-14, with the percentage of children enrolled in school at 96% or above for six years in a row.
- c. Nationally, the percentage of out of school (age group 6-14) remains at 3.3%, the same as the figure last year.
- d. In some states the proportion of girls (age group 11-14) out of school remains greater than 8%. These states are Rajasthan (12.1%) and Uttar Pradesh (9.2%).
- e. The proportion of children enrolled in private schools has increased slightly from last year.
- f. In 2014, 30.8% of all 6-14 years old children in rural India are enrolled in private schools. This number is up slightly from 29% in 2013.
- g. Compared to similar figures in 2013, there has been an increase in private school enrolment in almost all states. The only exceptions to this are Gujarat, Maharashtra, Uttarakhand, Nagaland and Kerala.
- h. In 2014, in class III, only a fourth of all children can read a class II text fluently. This number is rises to just under half in class V. Even in class VIII, close to 75% children can read class II level text (which implies that 25% still cannot).
- i. Some very small improvements in reading are visible in the last few years. For example the proportion of class V children who can at least read a class II level text has inched upwards from 46.8% in 2012 and to 47% in 2013 and to 48.1% in 2014. 38.7% of class III children could read at least a class I level text in 2012. This number is slightly higher at 40.2% in 2014.
- j. In some states, reading levels have improved since last year. For example, in 2014 a higher proportion of children in class V in Himanchal Pradesh, Haryana, Bihar, Odisha and Karnataka can at least read class II level text than was the case last year. Tamil Nadu shows major gains in reading over last year for class V. looking at trends over time, in many states the reading status of children is largely unchanged.
- k. However in some states, like Bihar, Assam, Jharkhand, Chhattisgarh, Madhya Pradesh and Maharashtra there are visible declines in reading levels over the last 5-6 years.
- l. The progress in subjects mathematics and English was not found satisfactory and student-teacher ratio was low. Infrastructure facilities were not complete in all schools so far.

▪ **Report of ‘PRATHAM’ as ASER (Annual Status of Education Report) 2016-**

The report of Pratham foundation ASAR 2016 has launched in New Delhi on January, 18, 2016. The has done 17473 villages included 562305 children of 3-16 years age group in whole rural India. There are following important facts of the survey-

- a. The enrollment rate of 6-14 years students is 96.9% in 2016 which was 96.7 in 2014.
- b. The enrollment rate of 15-16 years age group girls is 84.7% in 2016.
- c. Some states as Madhya Pradesh, Chhatisgarh, Uttar Pradesh etc. shows incensement in the number of non-school going students.
- d. The ratio of out of school girls is 9.7% in Rajsthan, 9.9% in Uttar Pradesh, and 8.5% in Madhya Pradesh.
- e. The enrollment rate of private schools remain almost unchanged 30.8% in 2014 and 30.5% in 2016 targeted age group of 6-14 years.
- f. It shows the nationally 42.5% growth of children, are able to read class 1<sup>st</sup> text book by class 3<sup>rd</sup> children.
- g. Government schools show the improvement in learning of mathematics in primary classes.
- h. The ability of leaning English in primary classes was unchanged on the behalf of 2014.
- i. In the school survey 71.4% students in primary schools and 73.2% students in upper primary schools were present on the day of survey.
- j. The facilities in schools are improving day by day.

#### 4. Research Studies about implementation of RTE Act 2009

Some research studies are administered to check the status of implementation of RTE Act- 2009 on schools level. The conclusions of some studies are as follow:

▪ **Soni, R. B. L. (2013).**

A research study has been made by NCERT to analyze the status of implementation of RTE Act-2009 as 'Status of Implementation of RTE Act 2009 in Context of disadvantaged Children at Elementary stage.' Main findings of study are as follow

1. The sample states/UTs have implemented provisions of RTE Act 2009 to a great extent.
2. There were very few cases of age appropriate admissions of disadvantage and children with disabilities.
3. In most of the places, materials for training of children admitted under age appropriate placement in different classes were not available.
4. State, district, block level funtionaries and teachers were aware of provisions of RTE Act 2009.
5. Parents were not aware of various provisions of RTE Act.
6. Shortage of teachers, alarming pupil-teacher ratio, other official duties assigned to teachers, busyness in training programmes, no trainig of regular teachers in education of children with disabilities and non-availability of special teacher support on daily basis are challanged in the implemenation of RTE Act.
7. States/UTs have very limited vision of arranging different types of educational materials for children with various disabilities.
8. All states/UTs have taken initiatives in conducting community awareness programmes to bring all children, including children with disabilities, to schools.

▪ **Singh K. (2013)**

It was a survey to check the implementation progress of RTE

Act 2009 of government basic schools at Barielly city. It was a tri-level survey included teachers, students and parents. This study was administered on 50 teachers, 50 parents and 100 students of 25 sampled schools. The results of study were that various provisions of RTE Act 2009 were not implemented completely. The all over progress of provisions implementation was at least 46% in basic primary schools of Bareilly city.

#### Limitations and Criticism of RTE Act 2009

Although, the RTE Act 2009 is appearing a mile stone for the full and healthy dealing to Indian Elementary Education System but there are some gapes and limitations in the Act as follow

- Free and Compulsory education is not more important but the equal education policy to whole country is more necessary.
- Only 25% seats reservation in private schools for the children of weaker sections is barrier for equal education and to the right of children.
- There is no provision to equal curriculum for all country in the RTE Act 2009. The equal curriculum is must for Hindi medium as well as English medium schools to equal opportunities and equal education.
- There is no provision to the 170000000 children, in the Act. The constitution has given the right already to children for balance diet, health and preprimary education, has restricted by this Act.
- The provision of no fees that, a child not need to pay any fees till his or her elementary education, is not fully clear.
- How implementation will go, is not clear in the Act. The free and compulsory education should not limited only for fee but it should cover complete education.
- The government should prepared all necessary infrastructure before the implementation of this Act because in the absence of infrastructure facilities the fruitful result are not coming.

#### Suggestions for effective implementation of RTE Act 2009

It may be following important suggestions to the effective implementation of RTE Act 2009-

- Government should complete infrastructure firstly as soon as possible.
- The Act should not only for passing certificate issuing but learning should increase. So the procedure of failing any child if he or her not coming on standard, should be implemented.
- Quality assurance and assessment of schools should be scheduled compulsory in certain time.
- The responsibility of parents should increase more because without active participation of parents, the learning of a child cannot go in proper way. Many survey show the low level of awareness in parents, which is a biggest barrier in learning of children.
- The curriculum framework should be equal in whole country and schools to equal to equal education facilities.
- The right of a teacher should be increased to better management of learning system.
- Government should attach the elementary education with new innovations, trends and technology to remain in

- competition with changing global educational perspective.
- Government should filter the useless schemes like Mid-Day Meal, Scholarships, free dresses etc. in elementary education system to come over funds leakage and corruption.

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