
THE RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT, 2009

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HISTORICAL EVOLUTION

Earl Warren, the Chief Justice of the United States once said, *education is perhaps the most important function of State and local governments. It is the very foundation of good citizenship.*¹

Constitutional Background:

The Right of Children to Free and Compulsory Education Act, 2009 or Right to Education Act (RTE) was enacted on 4th August 2009. It is one of the most significant legislations towards **universalisation of education in India**. The 86th Constitutional Amendment inserted Article 21A under Part III of Indian Constitution, making 'Right to Education' a fundamental right.

The legislative approval of RTE in 2009 has been a result of long periods of heated debates and alterations, **starting from 2002**. The first draft of the legislation was prepared and released in 2003. Suggestions and comments were invited from the public and a revised draft titled 'Free and Compulsory Education Bill' came about in 2004. The Central Advisory Board of Education (CABE) Committee submitted the Bill to the Ministry of Human Resource Development (MHRD). Further, the Bill was sent to National Advisory Council (NAC) and finally the Prime Minister. However, the Bill was rejected in 2006, citing financial constraints at the state levels.

Ultimately, RTE Act came into force on 1st April, 2010, making India one of the 135 countries of the world to make education a fundamental right for every child.

Indian Historical Evolution (Ancient India and Pre-Independence):

There has been an uncertainty regarding origin of education in Ancient India. According to many scholars, our information in the present times is based on a document of 'unequal value and unequal date'². Nonetheless education in India has primarily been **socially exclusive**. It

¹ Brown v. Board of Education, 347 US 483 (1954).

² Asha Verma, *A Critical Analysis of the Right of Children to Free and Compulsory Education*, 3 JCIL 1, 2 (2017), <https://jcil.lsyndicate.com/wp-content/uploads/2018/01/Asha-Verma-1.pdf>.

was the **sole privilege of priestly castes**, who had a religious basis for learning and an elitist medium of instruction in Gurukuls.

The discovery of sea-route in 1948 brought major changes. The British allowed access to education to few selective classes, all for their vested interests. Indians were restricted to work under British administration and education to all still remained a distant dream.

The demand for free and compulsory education can be traced back to the Indian freedom struggle. The Indian National Congress (INC) supported the expansion of elementary education. In **1906**, the **first law of compulsory education was passed in State of Baroda**, which provided compulsory education for boys aged 7-12 years and girls of 7-10 years. However, there was no unanimous view among the Constituent Assembly members; and hence no law regarding Right to Education was passed while drafting the Constitution.

OBJECTIVE OF LAW/POLICY

Education is one of most crucial investments for an individual, acting as a prerequisite for social justice and equity. The RTE Act is a building block for each and every child to get access to quality education. Hence, the main objective is RTE aims to ensure all children between 6 to 14 years of age receive elementary education, irrespective of their economic, social or caste backgrounds. It has been declared a fundamental right, to provide Constitutional protection to the children. Various provisions related to standards of school infrastructure, manpower, etc. are enlisted to ensure that the objective of this legislation is met.

“The aim of education is not the acquisition of information, although important, or acquisition of technical skills, though essential in modern society, but the development of that bent of mind, that attitude of reason, that spirit of democracy which will make us responsible citizens”

- Dr. Sarvapalli Radhakrishnan³

Education is the sole tool which develops an individual's thought process, enabling him to make decisions for himself. It brings knowledge, makes him capable of contributing to the society's betterment. The RTE Act, 2009 is a historic milestone in providing children the right to education.

³ Jayanta Ghosh, *Right to Education, 2009: Issues and Challenges*, SSRN Electronic Journal 1, 6 (2013), https://www.researchgate.net/publication/256051575_Right_to_Education_Act_2009_Issues_Challenges.

SUMMARY OF THE LAW/POLICY

The Right of Children to Free and Compulsory Education Act 2009 enshrines to provide free and compulsory elementary education to all children between 6-14 years of age.

Before discussing other salient features of the Act, it is important to understand the meaning of the following terms:

- **Elementary**, according to clause 2(f)⁴ of the RTE implies first grade to eighth grade.
- **Free education**⁵ translates to no direct or indirect fees needs to be paid by parents to the school. All expenses including the school admission fees, cost of books, uniform, transportation and study materials will be covered by the Government.
- **Compulsory education**⁶ implies that the Government has an obligation to ensure compulsory admission, attendance and completion of elementary education of every single child in the 6-14 age group.

Some other notable features are as follows:

1. The Act lays down the pupil-teacher ratio, duties of teachers, number of working days for the school and teachers, infrastructure, provisional standards for potable water facilities, etc., which every elementary school has to comply with.
2. If a child older than 6 years has to be newly admitted, he shall directly get admission in a class proportionate to his age wherein he shall additionally receive special training to be at par with his peers in school.
3. The medium of instruction in class should be the student's mother tongue.
4. Any harassment (physical, mental, emotional) or discrimination on the basis of caste, sex, colour etc. is strictly prohibited.
5. All schools, except the private unaided ones, are to be managed by a School Managing Committee (SMC) comprising of parents, guardians, teachers and the local authority officials. SMCs shall decide and deliberate school development plans, efficient utilisation of funds and working of the school.
6. The Act mandates that the financial burden of implementation will be shared by the Central and State Governments in the ratio of 55:45 all over India; except the north-

⁴ The Right of Children to Free and Compulsory Education Act, 2009, § 2, cl. f.

⁵ DEPARTMENT OF SCHOOL EDUCATION & LITERACY, <https://dsel.education.gov.in/rte> (last visited Jan. 12, 2021).

⁶ *Id.*

east states, which will follow a ratio of 90:10⁷.

7. Private schools/public unaided schools have to incorporate a 25 percent reservation for the disadvantaged (Scheduled Castes, Scheduled Tribes and Backward classes) and Economically Weaker Sections.
8. No child can be held back/expelled or be forced to appear for board examination before completion of his/her elementary education.
9. No admission tests or capitation fees is necessary. A certificate will be awarded in completion of elementary education.
10. Any person can file a grievance claim at the local authority, appeals for which will be decided by the State Commission for Child Rights.
11. Emphasis on recruitment of trained and qualified teachers is laid. Also, both urban and rural employment of teachers is encouraged to reduce regional disparity.
12. The curriculum should always be in consonance with the principles of Indian Constitution, focussing on all-round development of a child.

CRITICAL APPRAISAL

Upon analysing the provisions and implementation of RTE, 2009 over the years few positives and negatives are stated below:

Positives:

1. One of the major results is **young girls getting access to free education** in India. India does not put both the sexes on an equal pedestal. Most girls in rural areas drop out of school in their early years. The RTE by providing free education, encourages these young girls to come forward, study free of cost, and become literate.
2. Statistical data shows growth and fruitful **investment**, how **infrastructure** in government schools has considerably improved, **construction** of girls' toilets has nearly doubled⁸, etc.
3. **Sarva Shiksha Abhiyan**, a Government program aimed towards universalisation of elementary education has boosted the State's expenditure on RTE, from Rs. 12,285

⁷ Anshu Rathore, *Critical Analysis of Right to Free Compulsory Education Act, 2009*, INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH (Sept. 08, 2020), <https://www.ijalr.in/2020/09/critical-analysis-of-right-to-free.html>.

⁸ *Id.*

Crore in 2009-2010 to Rs. 25,000 Crore in 2016-2017⁹. Several other programmes like Rashtriya Madhyamik Shiksha Abhiyan (RMSA) and Centrally Sponsored Scheme on Teacher Education (CSSTE) have also been implemented on same lines.

Negatives:

1. Except pupil-teacher ratio, the **Government schools are not bound to meet any other norm**¹⁰. Hence, there are no consequences of not following the infrastructure guidelines, etc. set by the RTE. Only the private schools might lose their recognition if the infrastructure claims are not complied with.¹¹
2. The Bill **legitimises multi-grade teaching**, which means that the number of teachers is based on the number of students and not by the grade they teach. It overburdens the teachers and is disadvantageous for the students.
3. There are **no provisions to penalise the violations** of this right. For instance, in the Right to Information Act, if a public officer fails to reply within 30 days of the request, a daily penalty of Rs.250 is charged¹². There is no such penalty in the RTE Act.
4. Also, though both the State and Central governments work in unison, a downside is the **lack of accountability**. Each keeps on blaming the other for its lassitude.

Suggestions:

A few suggestions to cover the loopholes and improve implementation are as follows:

1. Although the State provides free elementary education, parents have a vital role in ensuring that their children pursue Secondary and Vocational level courses as well. Hence, **awareness** regarding the RTE act should be enhanced via campaigns, radio advertisements, etc.
2. **Strict penalties and fines** should be levied if the implementing authorities do not act in accordance with the legislation.
3. The **judiciary** has a **proactive role** in reprimanding schools and authorities for misappropriating funds, and their corrupt practises. **Grievance redressal** forums already exist, but their working needs to be accounted for.

⁹ *Id.*

¹⁰ The Right of Children to Free and Compulsory Education Act, 2009, § 25.

¹¹ PRS LEGISLATIVE RESEARCH, <https://prsindia.org/billtrack/the-right-of-children-to-free-and-compulsory-education-bill-2008-full-brief>.

¹² *Id.*

AMENDMENTS

The **first** amendment was referred to as **Right of Children to Free and Compulsory Education (Amendment) Bill 2012**.

- It brought disabled children under RTE's purview, introducing home-based education opportunity to students with severe disabilities.
- On 12th April, 2012, the Supreme Court judgement in **Unaided Private Schools of Rajasthan v. Union of India**¹³ declared that 'unaided minority institutions' will be outside the purview of the RTE. 12 days later, the Amendment was passed, inserting Section 1(4) with reference to Article 29 and 30 of the Indian Constitution to protect the minority interests.
- It gave the SMCs an advisory role in minority aided and unaided schools. Hence their say in the final authority is reduced.
- The Amendment responded to the debate regarding 25 percent reservation in private institutes. It held that the private schools should be happy and very willing to provide such reservation for the economically weaker category because the Government is duly paying the schools on behalf of these children. Additionally, this money received from the Government is much higher than the school's expenses or charges.¹⁴

To quote **Kapil Sibal**, the then MHRD minister, as he was summing up the UPA's attempts to appease the minority, *"If you walk two steps, we will walk ten steps."*¹⁵

The **Second Amendment in 2017** mainly brings the following changes:

- It extends the deadline for teachers to acquire the minimum qualifications for their job, from 31st March 2015 to 2019.
- The Government will help teachers by **introducing a platform 'Svayam'**, where offline and online education will be imparted to them. They will also be trained via DTH television channels arranged by the Government.
- The Act allows detention of school students in class 5 and 8. It hereby **revokes the 'No Detention Policy'** of the 2009 Act, now allowing schools to withhold/fail a child in the

¹³ Unaided Private Schools of Rajasthan v. Union of India, (2012) 6 SCC.

¹⁴ Aarti Dhar, *Amendment to Education Bill passed, disability net widened*, THE HINDU (April 25, 2012), <https://www.thehindu.com/news/national/amendment-to-education-bill-passed-disability-net-widened/article3350093.ece>.

¹⁵ Hariprasad, *The 2012 Amendment to RTE Act*, SECURE CORE (Mar. 27, 2017), <https://securecoreblog.wordpress.com/2017/03/27/the-2012-amendment-to-rte-act/>.

previous class. If a student fails in a re-examination, the state/central Government can decide on whether to allow the school to detain the child further.

There are different opinions regarding detaining children in the elementary classes, and after a through debate, this decision was implemented. The move was imperative to enhance ‘learning outcomes’ of the children, encouraging them to score better marks.¹⁶

JUDICIAL RESPONSE

The landmark case of **Unnikrishnan v. State of Andhra Pradesh**¹⁷ in 1993 laid the foundation of Article 21. The Supreme Court ruled that all citizens of India have a fundamental right to education. It is not an absolute right and the right to free education is only till the age of 14 years. The 86th amendment, apart from adding 21A to the constitution, modified Article 45 (Directive Principles of State Policy) instructing the State to provide for early childhood care and preschool education. Article 39(f) of DPSP also has a provision to provide equitable access to education.

As a result of the Unnikrishnan case¹⁸ ruling:

- Tapas Majumdar Committee was set up in 1999, resulting in the insertion of Article 21A.
- The upper limit was raised to 14 years.
- The Supreme Court held that Right to Education can be understood as an extension of Right to Life, as per Article 21. Following this, Article 21A was inserted. However, the obligation of a State to provide funds will be proportional to its economic and developmental standing in the nation.

Mohini Jain v. State of Karnataka¹⁹, popularly known as the ‘capitation fee’ case is a foundational case, dating way before the RTE act. A medical student, the petitioner challenged a private institute charging higher fees for students who did not get admission via the government seat. The issue before the court was whether Right to Education is guaranteed by the Indian constitution. The court hereby held that education is essential for a person’s overall development and well-being. Hence, Right to Education comes under the purview of Article

¹⁶ NDTV Education Team, *Lok Sabha Passes Bill Allowing Detention of School Children in Classes 5,8*, NDTV (Jul. 18, 2018), <https://www.ndtv.com/education/rte-amendment-bill-2017-lok-sabha-passes-bill-allowing-detention-of-school-children-1885693>.

¹⁷ Unni Krishnan v. State of Andra Pradesh, AIR (1993) SC 2178.

¹⁸ *Id.*

¹⁹ Mohini Jain v. State of Karnataka, (1992) 3 SCC 666.

21 (Right to Life and Liberty).

In **State of Tamil Nadu & Ors. v. K. Shyam Sunder & Ors.**²⁰, a writ petition was filed for a common curriculum in Tamil Nadu, demanding a Uniform System of Education for the entire State. The Supreme Court read Article 21A, 14 and 15 together, stating that the Right to Education also includes providing quality education rather than mere compulsory enrolments.

CONCLUSION

The provisions of RTE, 2009 are very detailed and inclusive, in attempts to enlist all subjective standards of schools and educational institutes. The RTE provides for an excellent legislative backing to provide equal educational opportunities for all children, irrespective of social, cultural, linguistic, geographical etc. background. At the same time, India's huge population of young children makes the smooth implementation of plans nearly impossible. Although the State provides free elementary education, parental and community participation cannot be undermined. The findings and statistics of various field research in States of India shows that the effects of RTE are very fluctuating and subjective. Despite the amendments, the actual potential of this legislation depends on advocacy and mobilization of collective effort towards making RTE available, accessible, acceptable and adaptable.

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²⁰ State of Tamil Nadu & Ors. v. K. Shyam Sunder & Ors., (2011) 8 SCC 737.

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