

# THE RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION: *‘GROUND REALITIES & CHALLENGES’*

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## ABSTRACT

The progress of education is an index of the general, social and economic progress of the country as a whole. Elementary education plays an important role in laying the proper foundation of a child's intellectual, physical, moral, emotional, social, cultural, and spiritual development. After independence, the Government of India realized the significance of elementary education and accordingly incorporated Article-45 in the constitution. It signifies that education is for all and not for a selected few and accepts that education is the birth right of every child. Since the progress in the field was not in accordance with the provisions of this Article, it was considered necessary to amend it to give more impetus. A landmark law which makes education a fundamental right for children has come into effect in India inserted in the constitution by the 86<sup>th</sup> amendment - Right to Education Act-2002. RTE was passed by the parliament in august-2009 & implemented on 1<sup>st</sup> April 2010. The present paper explores history of RTE ACT, need of the act. RTE has become the fundamental right in India but still we are not able to achieve Universalization of Elementary Education (UEE). The main focus will be on ground realities and challenges on the implementation of RIGHT TO EDUCATION ACT.

## INTRODUCTION

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.

In a historic judgement, the supreme court of India said “the citizen of the country has the fundamental right to education.....every child/citizen of this country has a right to free education until he/she complete the age of 14 years”

The government of India appointed a committee to consider the implication of proposal by Supreme Court of India to make elementary education , a fundamental right under the chairmanship of Muhiram Sakia.

In the millennium year (2000) leaders of 189 nation states including India, signed the United Nations sponsored Millennium Declaration, which set out the Millennium Development Goals (MDGs) to inter alia ensure that all children around the world are in primary school by the year 2015.

In adherence with this declaration, the central government announced its Sarva Shiksha Abhiyaan (Education For All) program and tabled the 86th Constitutional Amendment Act, 2002 which was passed with unanimous acclamation by Parliament.

As per article 21A in the Indian Constitution education is a fundamental right. The draft bill of the present act was composed in the year 2005. The bill was approved by the cabinet on 2nd July 2009, Rajya Sabha on 20th July 2009, and Lok Sabha on 4th Aug 2009. It comes into force as a Law on September 3, 2009.

## 86<sup>TH</sup> AMENDMENT ACT, 2002

- ARTICLE 45:  
Provision for Early Children Care and Education (ECCE)-  
“The state shall endeavor to provide early childhood care and education for children until they complete the age of 6yrs”
- ARTICLE 21: Right to live
- ARTICLE 21-A:Right to education  
“ The state shall provide free and compulsory education to all children of 6-14years in such a manner, as the state may, by law, determine.”
- ARTICLE 51-A(CLAUSE K):Fundamental duties of wards and parents  
Clause k has been added in Article 51-A:  
“It shall be the duty of every citizen of India, “who is parent or guardian to provide opportunities for education to child or the case may be, ward between the age of 6-14 years”

## NEED OF THE ACT

Contemporary India 's education statistics make dismal -indeed shocking -reading. Of the estimated 200 million children who enroll annually in the nation's 900,000 primary schools, 53 percent drop out before they make it into secondary education (class VIII). Of the remainder only 10 million enter institutions of tertiary education, of whom some 3 million graduate annually.

It is hardly surprising considering that 20 percent of government primary schools are multi-grade teaching institutions; another one-fifth don't have a proper building; 58 percent can't provide safe drinking water, and 70 percent lack toilet and sanitation facilities. Moreover corporal punishment is rife in India 's crowded classrooms, which boast the world's highest teacher-pupil ratio -1:63.

The combined annual outlay of central state governments for education in India has never crossed the mark of 4 percent of GDP. Compare it with the global average spending of 5 percent of GDP per annum and 6-7 percent in the developed nations of the western world.

## RIGHT TO EDUCATION – A LONG BATTLE

Decades of popular mobilization to make primary education free and all-encompassing in India yielded results after the turn of the millennium. The Ministry of Education reported that school enrolments reached 100% in 2005 for the first time in the country's history. Reaching all children by primary education was gradually becoming a reality, 57years after India attained political independence. In 1966 the Education Commission (known as ‘the Kothari Commission’) recommended exactly that, education for all children. It estimated that 6% of GNP for education would be necessary to attain that goal. Neither that budgetary allocations to education nor its universalization have yet been attained but are seen – finally – to be within reach.

One of the signposts was the 86TH Constitutional Amendment, which transformed the right to education from a directive for state policy into an individual right. It was passed by unanimous votes in the Lok Sabha in 2001 and by Rajya Sabha in 2002. It took five years to get that short and simple amendment adopted by parliament. It says: “The State shall provide free and compulsory education to all children of the age of six to fourteen years in such a manner as the State may, by law determine”. After education was affirmed as each child’s right, it took four more years to specify fiscal obligations of the central government, governments of individual states and the local authorities.

The next impetus came in 2004 when education was prioritized. A 2% surcharge on all taxes was introduced so as to generate additional funds for education. The central government also increased its financial contribution to education significantly.

In 2006, the Supreme Court issued notices to the central and state governments regarding their obligation to ensure education for all children as the Constitution requires. Noting that about 10 crore school age children were still laboring, a coalition of non-governmental organizations lodged a case. They argued that elimination of child labour and free and compulsory education were two sides of the same coin. This necessitates integrating children’s rights in policy-making and overcoming disjointed policies on education, labour, children and human rights.

The background to the constitutional change in 2001-2002 was accumulated societal anger at failure of successive governments to universalize primary education. The original constitutional pledge, at independence, was to ensure free and compulsory education for all children within ten years. It took 42 more years just to change the Constitution. The Supreme Court facilitated this process by declaring in 1993 that the state’s failure to provide education for all children was contrary to the Constitution.

Any cost that prevents a child from accessing school will be borne by the State, which shall have the responsibility of enrolling the child as well as ensuring attendance and completion of 8 years of schooling. No child shall be denied admission for want of documents; no child shall be turned away if the admission cycle in the school is over and no child shall be asked to take an admission test. Children with disabilities will also be educated in the mainstream schools.

## GLOBAL CONTEXT

From 1st April 2010, the right of children to free and compulsory education act has come into force in India.

With the Right to Education Act coming into force, India has joined the league of over 130 countries which have legal guarantees to provide free and compulsory education to children.

According to the UNESCO’s ‘Education for All Global Monitoring Report 2010’, about 135 countries have constitutional provisions for free and non-discriminatory education for all.

In India, the Right to Education law, providing free and compulsory schooling to children in the 6—14 year age bracket, came into force yesterday.

With the new education act now operational, India has joined some 20 other countries including Afghanistan, China and Switzerland, which have laws guaranteeing free and compulsory education for EIGHT years of elementary education.

India’s neighbors such as Sri Lanka and Pakistan do not have any law providing free education, where as Bangladesh and Myanmar have such provisions for a four-year-period while Nepal has five years of compulsory schooling.

According to the report, there are seven countries, including Romania and Brazil whose laws define seven years of compulsory education for a child, while five countries, including the Philippines and Georgia give children legal right to education for a period of six years.

Saudi Arabia, UAE, Iraq and eight other countries have the provision of five years of free education for children.

Besides, there are over 50 countries, including the US, South Africa, Malaysia and a majority of Sub-Saharan African countries which do not have any constitutional provision to provide free and compulsory education to children.

The report also states that some countries have achieved extraordinary progress in their education system and the number of children dropping out from schools has declined by 33 million worldwide since 1999.

## MAIN FEATURES OF THE ACT

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 school will have to take 25% of their class strength from the weaker section and the disadvantaged groups 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 is 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.

## MONITORING

The National Commission for Protection of Child Rights (NCPCR) has been mandated to monitor the implementation of this historic Right. A special Division within NCPCR will undertake this huge and important task in the coming months and years. A special toll free helpline to register complaints will be set up by NCPCR for this purpose. NCPCR welcomes the formal notification of this Act and looks forward to playing an active role in ensuring its successful implementation.

NCPCR also invites all civil society groups, students, teachers, administrators, artists, writers, government personnel, legislators, members of the judiciary and all other stakeholders to join hands and work together to build a movement to ensure that every child of this country is in school and enabled to get at least 8 years of quality education.

## GROUND REALITIES AND CHALLENGES

### ➤ Why only 6 – 14; why not 0 – 18 years

According to several activists, “The Bill allows only children between the age 6-14 to get the privileges, which we think is so shallow.”

They think that leaving out early childhood care and education, and senior schooling seriously limits the right to education. They explain: “0 to 6 years is considered to be the formative years in the child’s upbringing. We don’t see a reason why a child of this age group should be excluded. And India has signed the U.N. charter which states clearly that free education should be made compulsory to children of 0-18 years old.”

The act excludes 157 million children below six years of age and children between 15-18 years.

### ➤ Disabled left out of education Bill

The chances of 20 million children with physical and other disabilities to get the right to education has been jeopardized, as the Right to Education Bill excludes them. Although the earlier draft of the Bill had made specific mention of children with disabilities, the Bill tabled in the Lok Sabha has erased those references, activists say.

Activists say that India was the one of the first countries to ratify the UN Convention on Rights of Persons with Disabilities, in October 2007, which says “State parties shall ensure that persons with disabilities are not excluded from the general education system on the basis of disability and that children with disabilities are not excluded from free and compulsory primary education or from secondary education on the basis of disability.”

### ➤ Requirement of qualified and trained teachers

The elementary education part of our system already suffers from shortage of teachers and a fairly large number of teachers of this segment are untrained.

To get trained and qualified teachers within stipulated period is not only going to prove a Herculean task but appears to be almost impossible.

A gradual and systematic influx of teachers would have been better approach.

Teachers will be at the core of implementation of RTE that seeks to work towards a heterogeneous and democratic classroom where all children participate as equal partners. There are 57 lakh posts of teachers at primary and upper primary level.

Currently, more than 5.23 lakh teacher posts are vacant. To bring the pupil-teacher ratio to 30:1 as prescribed by the RTE Act, 5.1 lakh additional teachers are required. Already, there are 5.1 lakh schools with a pupil-teacher ratio of more than 30:1. On top of that 5.48 lakh untrained teachers at the primary and 2.25 lakh at upper primary level have to acquire necessary qualification within five years of the RTE Act coming into force.

The states with high percentage of untrained teachers and inadequate teacher education capacity are: Assam (55.13% untrained teachers), Bihar (45.5%), Chhattisgarh (31.32%), J&K (43.34%), Jharkhand (32.16%), Uttar Pradesh (25.87%) and West Bengal (32.15%). States like Andhra Pradesh, Delhi, Gujarat, Haryana, Himachal Pradesh, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Punjab, Rajasthan, Tamil Nadu and Uttarakhand have very low percentage of untrained teachers. They also have adequate capacity for teacher education.

#### ➤ **No standard definition of teacher qualification**

The existing elementary teacher education programs (known variously in different parts of the country as JBT, D. Ed., PTC, BSTC, etc) lack a bench mark and proper definition.

Teachers trained for secondary classes (classes IX, X, XI, XII) are considered eligible to teach middle classes (VI, VII, and VIII). But teachers trained to teach the elementary classes are only eligible to teach classes I – V. Even the Supreme Court has accepted this argument.

Now the TRE Act is for the kids in the age group 6—14 studying in classes I – VIII. So a clear definition of teaching eligibility is required so that a teacher can teach all these eight classes. This will also help administratively as well as keep teachers motivated.

#### ➤ **Reservation of seats in unaided private schools**

The act talks about 25% seat reservation in private/public unaided school for lesser privileged children. The fees of these students will be borne by state government. The fee will be reimbursed at government rate. There will be a wide gap between the cost of education per child and the reimbursement by the government. Who will bear this deficit portion? Obviously the remaining 75% of the students. For a certain class of society who provides education to their kids in these private school already by stretching their means this extra burden might prove too much. It's like providing benefit to one at the cost of other. Would improving the standard of the government school be not a better and more justified option?

#### ➤ **Status of poor kids in the private schools**

A glaring question is: how interested are the parents of the poor kids to send them to the private schools even if the education is free of cost? The kids will be suddenly exposed to a different living standard. Will they be treated with dignity and equality by their peers and teachers? Will it not be traumatic for the poor kids to cope with that?

Moreover, what about the overhead expenses such as uniform, books, stationery, etc of attending a private school? The chances are high that the parents themselves would feel intimidated at the thought of sending their kids to private schools.

#### ➤ **Input oriented Act**

The Act is deemed to be excessively input-focused rather than outcome-oriented. The bill guarantees for the admission of the children, but does not promise the quality of education.

#### ➤ **Admission according to age but no facility for bridge courses**

The act stipulates that the child should be assigned the class according to age, which is a good step because wasted years can be saved; but no bridge course is suggested that can prepare the child to adjust to the admitted class.

- Automatic passage to next class may be counter productive

As per the act, every student will be passed to the next class. This can promote indolence and insincerity among children towards their studies and carelessness and laxity among the teachers.

The Act will create a system with no incentive for students to try to improve themselves, or to behave with a modicum of restraint. It compromises their ability to withstand pressure and compete harder in order to excel. This will create a generation of drifters who have never tasted hard work or competition.

And what happens when the kids turn 14? Leaving aside some notable successes, there will be millions who have just gone through the system without gaining much – and valuable formative years of life wasted.

- School recognition

Section 19 of the Act requires all schools except government schools, to meet certain norms and standards relating to infrastructure, pupil-teacher ratio, and teacher salaries on the basis of which they are required to get recognition within three years. This clause penalizes private unrecognized schools, although they provide similar, if not better, teaching services compared to government schools, while spending a much smaller amount. They are susceptible to extinction in three years.

- School management Committee

The Act requires every government and aided school to form a School management Committee (SMC) which will be most comprised of parents and will be responsible for planning managing the operations of the school. SMC members are required to volunteer their time and effort. This can be a burden for the poor parents. And for the aided schools, the SMC rule will lead to a breakdown of their existing management structures.

## RECOMMENDATIONS

Right to education bill is a historic move and a major achievement by India government. But the Act will serve its purpose only if the hurdles that keep poor kids away from the school are removed.

- ❖ Give incentives for schooling

In the poor families, kids are seen as helping hands, the more the better. They help in household chores and in the farm, besides earning money from labor jobs. Their contribution is quite significant for the survival of the family as a whole. Sending them to school takes this support away from the family. Hence, in order to educate them the following steps are absolute necessity:

- Monetary support to parents for sending kids to school. For example, Rs 100 per month for each kid as long as they are enrolled in the school.
- Mid-day meal schemes. This is another wonderful idea to send kids to school and provide them nourishment too. Parents certainly love this idea, as seen from the running of Anganwadis in the state of Chhattisgarh.
- “Lack of interest” is responsible for major school drop-outs. HRD ministry’s

46th Round of the National Sample Survey (NSS) statistics of 2005 show that the drop out rate by class VIII is 51% mainly due to lack of interest. This disinterest is due to lack of stimulating environment and poor infrastructure in government schools at elementary levels. Additional factors, such as adverse teacher/student ratios and the perceived irrelevance of schooling also add to the high drop out rates.

❖ Establish ownership and responsibility

Particularly in the rural and poor areas, people's representatives – MPs, MLAs, Sarpanchs' – should be made responsible for smooth functioning of the schools in their areas. Local relevant NGOs and other organizations may also be involved. They can provide support through the School Management Committees.

❖ Focus on teacher training programs

The quality of teachers is the backbone of any teaching program. Untrained or unmotivated teachers can mar any program, no matter how ambitious it is. Creating a standard training program to train and generate quality teachers is crucial for the RTE Act to produce meaningful results.

❖ Use computer and satellite technology to create awareness and interest

Create mobile units that pay visits to different schooling centers, particularly in remote areas and show relevant films to both the teachers and the students. This will help sustain interest and arouse curiosity. Even visiting once in a fortnight or month would serve the purpose.

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