



CLAUSE 12 (1) (C) OF THE RIGHT TO EDUCATION ACT

Kriti Dhawan

Research Scholar

Department of Teacher Training and Non-Formal Education (IASE)

Faculty of Education

Jamia Millia Islamia

New Delhi-110025

ABSTRACT

The Right to Education Act is a powerful, positive and fantastic tool to unite India, where every child, irrespective of his/her background has access to school where friendly relationship across the barriers of caste, creed and economic background are built. Clause 12 (1) (c) of the act shifted Right to Education from a directive principle of state policy to a fundamental right. "12 (1) (c) clause of Right to Education Act, 2009 states a school belongs to specified category and an unaided school not receiving any kind of aid or grants to meet its expenses from the appropriate government or the local authority shall admit in class I, to the extent of at least 25% of the strength of that class, children belonging to weaker section and disadvantaged group in the neighbourhood and provide free and compulsory elementary education till its completion. The present paper also discusses aspects for admission for EWS and DG category according to RTE Act, 2009 and recent changes in criteria for admission. The paper concluded effective implementation of clause 12 (1) (c) for all school children would lead to better educational experience as well as social inclusion. To make our school system more inclusive as well as equitable, clause 12 (1) (c) is a purposeful endeavor.

KEYWORDS: Right to Education Act, Economically Weaker Section, Disadvantaged Groups, Reimbursement and Appropriate Government.

INTRODUCTION

Society is industrializing and modernizing day by day and in determining educational outcomes, social class increasingly plays a significant role. If the intervention is well-designed and aims to improve the quality of instruction, it can lead to make a difference. Factors, which are intangible such as school culture (the values propounded by school personnel and students peer groups), are also noteworthy. The reality of equitable classroom with children from different strata of society is not impossible, if the intervention is in the form of policy (EWS and DG free quota policy) is successful.

The Right to Education Act is a powerful, positive and fantastic tool to unite India, where every child, irrespective of his/her background has access to school where friendly relationship across the barriers of caste, creed and economic background are built.

In Indian Education, April 1, 2010 was a historic day as it provided as well as remarked for implementation for Right to Education Act. The Act considers education as a fundamental right. Free and Compulsory education for age bracket 6-14 years for every child as a fundamental right as well as private schools earmark 25 percent seats for children belonging to Economically Weaker Section and Disadvantaged Group. 25% reservation can be considered as a platform due to which unreached can be reached particularly with respect to the specific

provisions for disadvantaged groups. Disadvantaged Groups include children having disadvantage with respect to gender, geographical, culture, economical, linguistic, social or such other factors as well as children with special needs, migrant children, child labourers etc.

ECONOMIC WEAKER SECTION AND DISADVANTAGED GROUP – POLICY

In the late 20th Century, large number of private schools begun to cater middle class children which lead to segregation in access. Later, low-fee private schools for lower income families' children perpetuated the initial segregation. Clause 12 (1) (c) of the act shifted Right to Education from a directive principle of state policy to a fundamental right.

“12 (1) (c) clause of Right to Education Act, 2009 states a school belongs to specified category and an unaided school not receiving any kind of aid or grants to meet its expenses from the appropriate government or the local authority shall admit in class I, to the extent of at least 25% of the strength of that class, children belonging to weaker section and disadvantaged group in the neighbourhood and provide free and compulsory elementary education till its completion. Provided further that where a school imparts pre-school education, the provision shall apply for admission to such pre-school education. The school shall be reimbursed expenditure so incurred by it to the extent of per child expenditure incurred by the state or the actual amount charged from the child, whichever is less, in such a manner as may be prescribed. Provided that such reimbursement shall not exceed per child expenditure incurred by a school established, owned or controlled by the appropriate government or a local authority. Provided further that where such school is already under obligation to provide free education to a specified number of children on account of it having received any land, building, equipment or other facilities, either free of cost or at a concessional rate, such school shall not be entitled for reimbursement to the extent of such obligation (The Right of Children to Free and Compulsory Education Act, 2009).”

Every school is liable to provide such information to the appropriate government or the local authority.

BACKGROUND NOTE ON EWS AND DG POLICY

On the condition of providing free education to underprivileged children would be given fair and equal education without any prejudice and discrimination, many private schools have allotted land at subsidized rates from government. A social jurist filed a petition (W. P (c) 3156/2002)) in the Delhi high court and a judgement was passed on 20th January 2004 which ordered schools who had been allotted land from government, to give admission to children of underprivileged sections of society. The court further ordered that in case its order was not followed, these schools would be derecognized and lease deed provided to the schools would be cancelled. The Education Department of Delhi had also been instructed by the High Court to immediately issue rules and regulation pertaining to the admission procedure of unprivileged children.

In July 2005, Delhi government has published an order related to admission of the children belonging to Economically Weaker Section in many newspapers in which they have mentioned the guidelines for such admission. Therefore, it was a good opportunity for the poor by which they can also give free and good education to their children in public schools. Several complaints were sent to the Deputy Directors of Education of the Districts and DOE for the non-compliance of the court order. All these complaints came in to the notice of the Chief Information Commissioner during the hearing of those cases therefore commission has also recommended departmental inquiry against some deputy directors of education. Eventually in 2006-07 around 180 children and in 2007-08 around 400 children were able to get admission in private schools, who would have never dreamt of going to such schools. The order (NO. PS/ DE/ 2004/ 10496-11595 dated 27th April, 2004) was specific that private school should share the state's social responsibility to whom land was provided at concessional rates. However, this underlies the educational policy of promoting “common” or “neighbourhood schools.” All educational institutes including private schools are responsible to provide education. It does not solely rest with the government. Clause 12 (1) (c) of RTE Act emphasizes sharing of responsibility.

The rationale behind section 12 (1) (c) is to provide inclusive education to all. The reason stated by Kapil Sibal in parliament behind inserting section 12 (1) (c) was support from all stakeholders is required by the government in the system including the private sector. It was stated although to ensure Universalization of

Elementary Education is the governments' responsibility but on the ground to implement the same is very difficult. Therefore, the act ensures private school must reserve seats for EWS and DG category, as a support from the private sector which needs to be controlled in the same way.

The constitution also supports to share the responsibility with private entities (not minority institutions) to ensure fundamental right to education. The Supreme Court stated since education is a charitable activity, clause 12 (1) (c) of the act does not prohibit the fundamental right as enshrined in article 19 (1) (g) of the constitution to carry on a trade, business or profession. The court also held that in our civil society, Right to Education places an affirmative burden on all stakeholders as well as envisages a mutual agreement between the parents and the state. Ensuring social integration and inclusive schooling are two major rationales behind clause 12 (1) (c).

WHY 25 PERCENT?

The rationale for the reservation of figure "25 percent" for students from Economically Weaker Section and Disadvantaged Section can be found in an explanatory document of Ministry of Human Resource Development. "To ensure that children from socio-economically weaker backgrounds feel well-adjusted in private schools, it is imperative that they form a substantial proportion of the class they join. This also implies that these children cannot be made to study together in a separate section or at a different time (DISE Report, 2015)". As per the census 2001, Scheduled Castes and Scheduled Tribes comprise 24.4 percent of the total population. Also, in 2009 as estimated by the Tendulkar Committee, 37.2 Percent of the total population was below poverty line. So, the rationale of the figure of 25 Percent in the clause 12 (1) (c) is also based on the above-mentioned two facts. Less than 25 percent proportion could be considered as a smaller proportion that would only serve a token purpose." This could also hinder the larger population of children from disadvantaged groups and weaker sections to avail of this opportunity over the past few years (DISE Report, 2015)".

ASPECTS FOR ADMISSION FOR EWS AND DG CATEGORY (ACCORDING TO RTE ACT, 2009)

TABLE 1: ASPECTS FOR ADMISSION

CATEGORY	CRITERIA	COMMENTS
Defining Eligibility and Documentation Required	Definition	Children whose parents' annual income is less than one lakh ₹ per annum are considered to be children belonging to EWS. Minimum residency period of three years nullified, previously which was required. Children belonging from SC, ST, OBC (not creamy layer), Orphans, Transgender, With Special Needs and Suffering from Disability are considered as DG.
	List of necessary documents for each category of applicants	Income certificate is not required by DG category. Documents required for applicants of each category are given with office or department as well as rank of signing officer. For Example: Income certificate is needed for the admission of child from Economically Weaker Section issued by revenue officer. Entire list of documents required is printed on page 2 of the form that parents fill out which are as follow: Submit any one of the following as proof: Proof of Date of Birth: (1) Birth certificate under the Birth, Death and Marriage Certificate Act, 1969. (2) Hospital/Auxiliary nurse and Midwife (ANM) register record. (3) Anganwadi Record. (4) Declaration of age of the child by the parents or guardian. Proof or Present Residential Address:

		<p>(1) Ration card in the name of Parents having name of the Child in Ration card.</p> <p>(2) Domicile certificate of child or his/her parents.</p> <p>(3) Voter ID-card of any of the parents.</p> <p>(4) Electricity Bill/MTNL telephone bill/Water bill.</p> <p>(5) Unique Identity Card (Aadhar) of Mother/Father/Child issued by Government of India.</p> <p>(6) Passport in the name of any of the parents or child.</p> <p>Proof of Economically Weaker Section (EWS):</p> <p>(1) Income certificate issued by a Revenue Officer not below the rank of Tehsildar.</p> <p>(2) BPL Ration Card (Yellow coloured)</p> <p>(3) AAY Ration Card (Pink coloured)</p> <p>(4) Food Security Card issued by Food and Supply Department (GNCT of Delhi).</p> <p>Proof of DG:</p> <p>(1) Caste Certificate issued by Revenue Department GNCT Delhi (DC Office) in respect of SC/ST/OBC (Non Creamy Layer) of Child of Parents.</p> <p>(2) Medical Certificate issued by Govt. Hospital in respect of child with Special Needs/Disabled.</p> <p>(3) Documentary evidence for Orphan.</p> <p>(4) Documentary evidence for Transgender.</p>
	Age criteria	By 31st March, Minimum age for: Pre-School Admission: 3 years Pre-Primary Admission: 4 years Class 1 Admission: 5 years.
	Entry level	Clause 12 (1) (c) is applicable to Pre-School, Pre-Primary or Class 1 i.e. to all entry level classes. 25% reservation is mandatory, wherever fresh admissions are made.
	Neighbourhood criteria	Students who are residing within distance of 1 km of school will be given first priority. Students from 3 km will be considered if seats remain unfilled. Afterwards, students from 6 km to 8 km may be considered.

Information Outreach Process	Dissemination of Information	Information must be displayed on School's notice boards as well as on the website of the DOE. For the proceeding academic year by 31st of December, information must be shared with the Dy. DOE.
	Type of Information	It is mandatory for schools to share information about total number of seats available as well as free seats available. Schools must share date of submission of application. Schools must display date(s) of list of eligible candidates for draw, draw, list of successful candidates, waiting list, deposition fees and last date of admission. All these date(s) must be indicated clearly on the application receipt given to parents.

Reimbursement provision	Frequency of calculation	of	How many times per child expenditure to be calculated.
	Authority calculate reimbursement amount	to	Responsibility assigned to committee or individual to calculate the reimbursement amount for per child.
	Method		Schools fill their expenditure incurred on EWS and DG students, government provides reimbursement amount according to their calculation
	Criteria documents needed)	(or	Documents needed or criteria for reimbursement.
	Number installments	of	For the reimbursement amount, number of installments decided.

Selection Process	Authority responsible		Responsibility to circulate all the relevant information lies with the school.
	Description of format or sample copy attached to notification	of	Receipt must be given by schools, when receiving an application with registration number for student. Application form must be attached to notification. On the website of DOE, application form is uploaded.
	Dates for admission cycle	for	Declaration of dates of admission cycle must be declared by schools with respect to date(s) of submission of application, eligible candidates for draw, draw, list of successful candidates, waiting list, deposition fees as well as last date of admission.
	Lottery		Date of lottery must be declared by school.
	Locations		Admission form can be uploaded from the website or can be collected from the schools by parents. Application form must be submitted back to the schools and parents must collect a receipt for their application.
	Authority to oversee lottery/selection process	to	Nominee of the Education Department (not below the rank of vice principal) and parents of applicants must be present during the lottery. Videography of lottery process must be done. Along with the list of selected candidates, CD/DVD shall be submitted to Dy. DOE.

Grievance Mechanism and Monitoring	Appointment of local authority	of	“Local authorities are listed below: (a) In relation to school under administrative control of the
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		Government, the Government. (b) In relation to school under administrative control of any Municipal Corporation, such Municipal Corporation. (c) In relation to school under administrative control of New Delhi Municipal Council, that Council. (d) In relation to school under administrative control of Delhi Cantonment Board, that Board (DISE Report-2015)”.
	Formations of State Commission for Protection of Child Rights (SCPCR)/ RTE Protection Authority (REPA)	Formation of Delhi Commission for Protection of Child Rights. Schools must collect separate circular listed information regarding EWS and DG children. Schools have to upload information into an online portal. This exercise's purpose is not mentioned.

Special Mention	Tracking and Monitoring	Once data of every admitted child is uploaded on a portal, s/he shall be assigned a unique ID. During the stay of the child in the school, ID shall remain the same.
	Grievance Redressal	District Admission Monitoring Committee (DAMC) to be formed in each district. Chairperson of the DAMC comprises Dy. DOE, DOE and GNCTD. Any parent, who is not satisfied or discontented with the school, may file a complaint. The complaint can be filed in writing to the DAMC. Parent can also address to the concerned Dy. Director of Education (Chairperson). Further procedure for redressal was not mentioned. In the beginning, it sounds promising. To explain the entire process in detail would be helpful.

(This information has been taken from <http://www.dise.in/Downloads/State-of-the-Nation-Section-12-1-c-CSF-March-2015.pdf> i.e., State Of The Nation: RTE Section 12 (1) (c) - DISE).

Different states have different rules and regulations. Every year there is a bit change in criteria for admission.

In 2012, DOE ordered the following neighbourhood criteria to be followed by the recognized unaided private schools' for admitting children from economically weaker section and disadvantaged group:

- Admission shall first be offered to eligible students belonging to economically weaker section and disadvantaged group residing within 1 km of the specific school.
- In case, the vacancies remain unfilled, students residing within 3 km of the school shall be admitted.
- If there are still vacancies, then the admission shall be offered to other students residing within 6 km of the institution.
- Students residing beyond 6 km shall be admitted only in case vacancies remain unfilled even after considering all the students within 6 km area.

They also laid down that “for the admission of child belonging to orphan- a certificate issue by the Women and Child Development Department of GNCT of Delhi shall be considered.”

From 2016-17 session, there was centralized admission system under DOE. EWS/DG category had to fill online application on Directorate of Education website i.e., www.edudel.nic.in. Admissions of EWS (annual income less than one lakh ₹) and DG category (SC/ST/ OBC non creamy layer/ physically challenged/ orphan and transgender) were made through computerized lottery system.

The eligible age limits for admission in the entry level classes (pre-school/ nursery, pre- primary/ kg and class - 1) were as follow:

TABLE 2: ELIGIBLE AGE LIMITS FOR ADMISSION

S.NO.	CLASS	AGE LIMIT AS ON 31st MARCH
a.	Pre-school/ Nursery	Less than 4 (3-4) years
b.	Pre-primary/Kg	Less than 5 (4-5) years
c.	Class 1	Less than 6 (5-6) years

Upper age limit for admission in entry level classes for differently abled children were as under:

TABLE 3: ELIGIBLE AGE LIMITS FOR DIFFERENTLY ABLED CHILDREN

S.NO.	CLASS	AGE LIMIT AS ON 31st MARCH
a.	Pre-school/ Nursery	Less than 5 (4-5) years
b.	Pre-primary/Kg	Less than 6 (5-6) years
c.	Class 1	Less than 7 (6-7) years

They also stated that further relaxation in upper age limit to children with mental disabilities shall be allowed.

For the academic session 2018-19, in Disadvantaged Group category, "all the children living with or affected by HIV" were also added.

From 2019-20, academic session, categories were modified. Children with Disabilities were removed from DG category and was made separate category. 22% seats were reserved for EWS (annual income less than one lakh ₹)/DG category (SC/ST/ OBC non-creamy layer/orphan and transgender and all the children living with or affected by HIV) were made through computer lottery system at the entry level classes (pre-school/ nursery, pre-primary/ kg and class -1). 3% seats within the 25% reserved seats under EWS/DG (as per section 12 (1) (c) of RTE Act, 2009) at the entry level classes (pre-school/ nursery, pre-primary/kg and class 1) were reserved for admission under children with disabilities category as defined in the Rights of Persons with Disabilities Act, 2016. RPWD Act, 2016 defines, "Person with Disability means a person with long term physical, mental, intellectual or sensory impairment which in interaction with barriers, hinders his full and effective participation in society equally with others".

The eligible age limits for admission in the entry level classes (pre-school/ nursery, pre- primary/ kg and class - 1) are as follow:

TABLE 4: ELIGIBLE AGE LIMITS FOR ADMISSION

S.NO.	CLASS	AGE LIMIT AS ON 31 st MARCH
a.	Pre-school/ Nursery	3-5 years
b.	Pre-primary/Kg	4-6 years
c.	Class 1	5-7 years

In 2020, admissions were not done due to pandemic and lockdown. Those, backlog admissions were done in 2021.

From 2021, however, the age criteria for children with disabilities category as defined in the Right of persons with disabilities (RPWD) Act, 2016 at entry level classes (pre-school/ nursery, pre-primary/kg and class -1) is as follow:

TABLE 5: ELIGIBLE AGE LIMITS FOR DIFFERENTLY ABLED CHILDREN

S.NO.	CLASS	AGE LIMIT AS ON 31 st MARCH
a.	Pre-school/ Nursery	3-9 years
b.	Pre-primary/Kg	4-9 years
c.	Class 1	5-9 years

CONCLUSION

Clause 12 (1) (c) imposes a legal and moral imperative upon private unaided schools to reserve 25 percent seats at entry level class for children from Economically Weaker Section and Disadvantaged Categories. The rationale behind this clause is to ensure that all stakeholders in society along with the states share the responsibility of achieving the right to free and compulsory elementary education.

Nowadays, number of private schools has increased or can say, presence of private schools has increased, thus, private schools are natural stakeholder to the fulfillment of this responsibility. The mandate should also be understood as an effort to arrest the increasing segregation in Indian schooling and promote an environment of knowledge sharing between different sections of society to encourage the narrowing of current societal divisions. It has the potential to impact 1.6 crores children from EWS and DG categories in the next 8 years (DISE Report-2015)".

Various researches and reports have shown that even after more than a decade of implementation of RTE Act 2009, awareness needs to be generated. There is a disparity between states as well as rural and urban areas. In order to meet the challenges and surmount the hurdles that stand in the way of implementing Right to Education Act, it is needful to concentrate all efforts with full dedication and commitment. Efforts should be focused on qualitative improvement of the whole programme. If want to make RTE Act, a true reality then, it would be necessary to overhaul the entire education system. Supporting mechanisms, administrative imperatives and implementation challenges need to be addressed if such policy improvements are to yield results on the ground. The RTE Act acknowledges that the obligation does not rest solely with the government to provide compulsory education of good quality but with all educational institutions comprising private schools. Vinod Raina, one of the chief thinkers behind the RTE act also explained this as well as supports this.

Many dismissed that section 12 (1) (c) on receiving disproportionate and unnecessary attention. The rationale for this given by many is it affects a very small proportion of the population. So, on this ground many dismissed clause 12 (1) (c) and the attention it receives. Further, in many private schools quality of learning is uncertain, so, the potential of the mandate to considerably improve learning outcomes is considered limited.

In India, the growing share of private school enrolment has raised the concerns about the socio-economic stratification of schooling by ability to pay. "Such stratification not only perpetuates inequality over generations, but also threatens the ideal of 'Public Schooling' as a shared space for young citizens at a formative stage of their lives that can foster awareness of and respect for the socio-economic diversity in the country (Muralidharan, 2014)."

RTE clause 12 is a positive opportunity as it designs an education system that mitigates the weakness of the other as well as can leverage the strengths of both private as well as public provision. However, on the one side, clause 12 (1) (c) has been broadly supported because of the goal i.e. inclusiveness but on the other side there is

concern that the provision may deteriorate and dilute the quality of education for students to begin with private schools.

“A well-implemented clause 12 of the RTE Act has the potential to transform school education in India by:

- (A) Reducing socio-economic stratification in schools.
- (B) Empowering EWS and DG children with more schooling choices and options.
- (C) Increasing pro-social preferences and behavior among wealthy children.
- (D) Encouraging entry and expansion of higher-quality private schools catering to EWS and DG students (Since the government will pay the fees) and
- (E) Forcing government schools to improve their quality since their monopoly power over the captive demographic of EWS and DG children who cannot afford to pay private school fees will be reduced (Muralidharan, 2014).”

One can clearly depict that; the first two features of clause 12 (above mentioned) can enhance and improve social integration as well as equity. The last two features would lead to improvement of quality in both private and public school.

The recent policy formulation National Education Policy, 2020 also aims to eliminate any remaining disparity in access to education (including vocational education) for children from any gender or other socio-economically disadvantaged group. NEP, 2020 states that "while the Indian education system and successive government policies have made steady progress towards bridging gender and social category gaps in all levels of school education, large disparities still remain particularly for Socio-Economically Disadvantaged Groups (SEDGs) that have been historically underrepresented in education. Socio-economically disadvantaged groups (SEDGs) can be broadly categorized based on gender identities (particularly female and transgender individuals), socio-cultural identities (such as students from villages, small towns, and aspirational districts), disabilities (including learning disabilities) and socio-economic conditions (such as migrant communities, low income households, children in vulnerable situations, victims of or children of victim of trafficking, orphans including child beggars in urban areas and the urban poor).

The policy acknowledges the importance of interventions to promote education of children belonging to all communities that are educationally underrepresented. The policy also recognizes the importance of creating enabling mechanisms for providing children with special needs (CWSN) or divyang, the same opportunities of obtaining quality education as any other child. NEP, 2020 talks about attaining full inclusion and equity for all SEDGs. For attaining inclusion, change in school culture is required. All participants in the school education system, including teachers, principals, administrators, counselors and students will be sensitized to the requirements of all students, the notions of inclusion and equity, the respect, dignity and privacy of all persons. Such an educational culture will provide the best pathway to help students become empowered individuals who, in turn, will enable society to transform into one that is responsible towards its most vulnerable citizens.

Effective implementation of clause 12 (1) (c) for all school children would lead to better educational experience as well as social inclusion. To make our school system more inclusive as well as equitable, clause 12 (1) (c) is a purposeful endeavor. One can clearly depict clause 12 (1) (c) of the RTE Act has implications not only for schools but for society at large as well.

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