

## IMPLEMENTATION OF RIGHT TO EDUCATION: A CONSTITUTIONAL OVERVIEW

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### ABSTRACT

*The aim of the present paper is to discuss the about the implementation of the right to education at the grass root level in Indi from the Constitutional point of View. The right to education is a human right which every human being is entitled to and can thus claim merely by virtue of being human. It enshrined in the Universal Declaration of Human Rights (UDHR), and subsequently in many binding international agreements as well as in domestic laws. The Indian Constitution has given this right the status of fundamental right. The other objective of this paper is to reflect the role of Indian Judiciary in implementation of this fundamental right as well as to identify and evaluate significant strategies related to the enforcement of the RTE Act for maximum benefit of the children in India.*

*Nearly eight years after the Constitution was amended to make education a fundamental right, the government on Thursday implemented a historic law to provide free and compulsory education to all children in age group of 6-14 years. The 86th Constitutional amendment making education a fundamental right was passed by Parliament in 2002. The Right of Children to Free and Compulsory Education Act, a law to enable the implementation of the fundamental right, was passed by Parliament makes it obligatory on part of the state governments and local bodies to ensure that every child gets education in a school in the neighborhood. Its implementation has directly benefit close to one crore children who do not go to schools at present. These children, who have either dropped out from schools or have never been to any educational institution, can be enrolled in schools. The Act makes it a right of every child to get education. The Act makes it obligatory for the appropriate governments to ensure that every child gets free elementary education.*

*The Act mandates that even private educational institutions have to reserve 25 per cent seats for children from weaker sections. Certain schools have already challenged the law in the Supreme Court as being "unconstitutional" and violating fundamental rights of unaided private educational institutions. Despite the flaws in the way of RTE Act, it is important to simultaneously ensure proper implementation and realization of this fundamental right of the children.*

### INTRODUCTION

Education, if looked at beyond its conventional boundaries, forms the very essence of all our actions. What we do is what we know and have learned, either through instructions or through observation and assimilation. When we are not making an effort to learn, our mind is always processing new information or trying to analyze the similarities as well as the tiny nuances within the context which makes the topic stand out or seem different. If that is the case then the mind definitely holds the potential to learn more, however, it is us who stop ourselves from expanding the horizons of our knowledge with self-doubt or other social, emotional, or economic constraints. While most feel that

education is a necessity, they tend to use it as a tool for reaching a specific target or personal mark, after which there is no further need to seek greater education. Nonetheless, the importance of education in society is indispensable and cohering, which is why society and knowledge cannot be ever separated into two distinct entities. Let us find out more about the role of education in society and how it affects our lives. Education plays its continuous role in all spheres of life. The reason being, that if we are aware of the drawbacks of a decision and we know about the possible contingencies and the collateral damage, our consequent actions would be wiser, which would help us to keep danger at bay at all times.

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On 12 April 2012, in its historical decision the Supreme Court (SC) of India threw its weight behind the Right of Children to Free and Compulsory Education Act, 2009. The court upheld the constitutional validity of RTE Act that guarantees children free and compulsory education from the age of 6 to 14 years of age. The judgment makes it mandatory for the government, local authorities and private schools to reserve 25 percent of their seats for 'weaker and disadvantaged sections' of society. The decision has wiped away many apprehensions regarding the future of the Act. It has been welcomed by academicians, politicians, journalists and others.

**Historical back ground of RTE :** The Right of Children to Free and Compulsory Education Act' or Right to Education Act (RTE), is an Act of the India enacted on 4 August 2009, which describes the modalities of the importance of free and compulsory education for children between 6 and 14 in India under Article 21A of the Indian Constitution. India became one of 135 countries to make education a fundamental right of every child when the act came into force on 1 April 2010. Present Act has its history in the drafting of the Indian constitution at the time of Independence but is more specifically to the Constitutional Amendment of 2002 that included the Article 21A in the Indian constitution making Education a fundamental Right. This amendment, however, specified the need for a legislation to describe the mode of implementation of the same which necessitated the drafting of a separate Education Bill. It is the 86th amendment in the Indian Constitution. A rough draft of the bill was composed in year 2005. It received much opposition due to its mandatory provision to provide 25% reservation for disadvantaged children in private schools. The sub-committee of the Central Advisory Board of Education which prepared the draft Bill held this provision as a significant prerequisite for creating a democratic and egalitarian society. Indian Law commission had initially proposed 50% reservation for disadvantaged students in private schools.

The RTE Act provides the right to the children free and compulsory education till completion of elementary education in a neighborhood school.

It clarifies that 'compulsory education' means obligation of the appropriate government to provide free elementary education and ensure compulsory admission, attendance and completion of elementary education to every child in the six to fourteen age group. 'Free' means that 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 elementary education. It makes provisions for a non-admitted child to be admitted to an age appropriate class. It specifies the duties and responsibilities of appropriate Governments, local authority and parents in providing free and compulsory education, and sharing of financial and other responsibilities between the Central and State Governments. It lays down the norms and standards relating inter alia to Pupil Teacher Ratios (PTRs), buildings and infrastructure, school-working days, teacher-working hours. It provides for rational deployment of teachers by ensuring that the specified pupil teacher ratio is maintained for each school, rather than just as an average for the State or District or Block, thus ensuring that there is no urban-rural imbalance in teacher postings. It also provides for prohibition of deployment of teachers for non-educational work, other than decennial census, elections to local authority, state legislatures and parliament, and disaster relief. It provides for appointment of appropriately trained teachers, i.e. teachers with the requisite entry and academic qualifications. It prohibits (a) physical punishment and mental harassment; (b) screening procedures for admission of children; (c) capitation fee; (d) private tuition by teachers and (e) running of schools without recognition. It provides for development of curriculum in consonance with the values enshrined in the Constitution, and which would ensure the all-round development of the child, building on the child's knowledge, potentiality and talent and making the child free of fear, trauma and anxiety through a system of child friendly and child centered learning.

**Significance of the Act :** The Act makes education a fundamental right of every child between the ages of 6 and 14 and specifies minimum norms in elementary schools. It requires all private schools(except the minority institutions) to reserve 25% of seats for the poor

and other categories of children (to be reimbursed by the state as part of the public-private partnership plan). Children are admitted in to private schools based on caste-based reservations. It also prohibits all unrecognized schools from practice, and makes provisions for no donation or capitation fees and no interview of the child or parent for admission. The Act also provides that no child shall be held back, expelled, or required to pass a board examination until the completion of elementary education. There is also a provision for special training of school drop-outs to bring them up to par with students of the same age. The RTE act requires surveys that will monitor all neighborhoods, identify children requiring education, and set up facilities for providing it.

Observation by the World Bank: The World Bank education specialist for India, Sam Carlson, has observed that the RTE Act is the first legislation in the world that puts the responsibility of ensuring enrolment, attendance and completion on the Government. It is the parents' responsibility to send the children to schools in the US and other countries. The Right to Education of persons with disabilities until 18 years of age is laid down under a separate legislation- the Persons with Disabilities Act. A number of other provisions regarding improvement of school infrastructure, teacher-student ratio and faculty are made in the Act.

Funding and Implementation of the Act: Education in the Indian constitution is a concurrent issue and both centre and states can legislate on the issue. The Act lays down specific responsibilities for the centre, state and local bodies for its implementation. The states have been clamouring that they lack financial capacity to deliver education of appropriate standard in all the schools needed for universal education. Thus it was clear that the central government (which collects most of the revenue) will be required to subsidise the states. A committee set up to study the funds requirement and funding initially estimated that Rs 1710 billion or 1.71 trillion (US\$38.2 billion) across five years was required to implement the Act, and in April 2010 the central government agreed to sharing the funding for implementing the law in the ratio of 65 to 35 between the centre and the states, and a ratio of

90 to 10 for the north-eastern states. However, in mid 2010, this figure was upgraded to Rs. 2310 billion, and the center agreed to raise its share to 68%. There is some confusion on this, with other media reports stating that the centre's share of the implementation expenses would now be 70%. At that rate, most states may not need to increase their education budgets substantially. A critical development in 2011 has been the decision taken in principle to extend the right to education till Class X (age 16) and into the preschool age range. The CABE committee is in the process of looking into the implications of making these changes.

#### **Judicial Activism and Implementation Status:**

A report on the status of implementation of the Act was released by the Ministry of Human Resource Development on the one-year anniversary of the Act. The report admits that 8.1 million children in the age group six-14 remain out of school and there's a shortage of 508,000 teachers country-wide. A shadow report by the RTE Forum representing the leading education networks in the country, however, challenging the findings pointing out that several key legal commitments are falling behind the schedule. The Supreme Court of India has also intervened to demand implementation of the Act in the Northeast. It has also provided the legal basis for ensuring pay parity between teachers in government and government aided schools. Haryana Government has assigned the duties and responsibilities to Block Elementary Education Officers cum Block Resource Coordinators (BEEOs-cum-BRCs) for effective implementation and continuous monitoring of implementation of Right to Education Act in the State. It has been pointed out that the RTE act is not new. Universal adult franchise in the act was opposed since most of the population was illiterate. Article 45 in the Constitution of India was set up as an act: The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years. As that deadline was about to be passed many decades ago, the education minister at the time, M C Chagla, memorably said: Our Constitution fathers did not intend that we just set up hovels,



put students there, give untrained teachers, give them bad textbooks, no playgrounds, and say, we have complied with Article 45 and primary education is expanding... They meant that real education should be given to our children between the ages of 6 and 14 M.C. Chagla, 1964 . In the 1990s, the World Bank funded a number of measures to set up schools within easy reach of rural communities. This effort was consolidated in the Sarva Shiksha Abhiyan model in the 1990s. RTE takes the process further, and makes the enrolment of children in schools a state prerogative.

**Loop holes in the Act:** The act has been criticised for being hastily drafted, not consulting many groups active in education, not considering the quality of education, infringing on the rights of private and religious minority schools to administer their system, and for excluding children under six years of age. Many of the ideas are seen as continuing the policies of Sarva Shiksha Abhiyan of the last decade, and the World Bank funded District Primary Education Programme DPEP of the '90s, both of which, while having set up a number of schools in rural areas, have been criticised for being ineffective and corruption-ridden. The quality of education provided by the government school system is not good. While it remains the largest provider of elementary education in the country, forming 80% of all recognised schools, it suffers from shortage of teachers and infrastructural gaps. Several habitations lack schools altogether. There are also frequent allegations of government schools being riddled with absenteeism and mismanagement and of appointments made on political convenience. Despite the allure of free lunch in the government schools, many parents send their children to private schools. Average schoolteacher salaries in private rural schools in some States (about Rs. 4,000 per month) are considerably lower than those in government schools. As a result, the proponents of low-cost private schools critiqued the government schools as being poor value for money. Children attending the private schools are seen to be at an advantage, forming a discrimination against the weakest sections who are forced to go to government schools. Furthermore, the system has been criticised as

catering to the rural elites who are able to afford school fees in a country where a large number of families live in absolute poverty. The act has been criticised as discriminatory for not addressing these issues. It is a fraud on our children. It gives neither free education nor compulsory education. In fact, it only legitimizes the present multi-layered, inferior quality school education system where discrimination shall continue to prevail. It has been noted that 54% of urban children attend private schools, and this rate is growing at 3% per year. "Even the poor children are abandoning the government schools. They are leaving because the teachers are not showing up.

**Public-private Partnership:** To address these quality issues, the Act has provisions for compensating private schools for admission of children under the 25% quota which has been compared to school vouchers, whereby parents may "send" their children in any school, private or public. This measure, along with the increase in PPP (Public Private Partnership) has been viewed by some organizations such as the All-India Forum for Right to Education (AIF-RTE), as the state abdicating its "constitutional obligation towards providing elementary education".

**Infringement on rights of private Schools:** The Society for Un-aided Private Schools, Rajasthan (in Writ Petition (Civil) No. 95 of 2010) and as many as 31 others petitioned the Supreme Court of India claiming that the act violates the constitutional right of private managements to run their institutions without governmental interference. The parties claimed that providing 25 percent reservation for disadvantaged children in government and private unaided schools is "unconstitutional." Forcing unaided schools to admit 25% disadvantaged students has also been criticized on the grounds that the government has partly transferred its constitutional obligation to provide free and compulsory elementary education to children on "non-state actors," like private schools, while collecting a 2% cess on the total tax payable for primary education. On 12 April 2012, a three judge bench of the Supreme Court delivered its judgement by a majority of 2-1. Chief Justice SH Kapadia and Justice Swatanter Kumar held that providing such reservation is not

unconstitutional, but stated that the Act will not be applicable to private minority schools and boarding schools. However, Justice KS Radhakrishnan dissented with the majority view and held that the Act cannot apply to both minority and non-minority private schools that do not receive aid from the government. In September 2012, the Supreme Court subsequently declined a review petition on the Act.

**Hurdles for orphans:** The Act provides for admission of children without any certification. However, several states have continued pre-existing procedures insisting that children produce income and caste certificates, BPL cards and birth certificates. Orphan children are often unable to produce such documents, even though they are willing to do so. As a result, schools are not admitting them, as they require the documents as a condition to admission.

**Concern of Quality Education:** One of the primary objectives of Right of Children Free and Compulsory Education Act, 2009 is improving quality education. The quality of elementary education, particularly in government schools, is a matter of serious concern. The quality of school education depends on various variables which includes physical infrastructure, method of teaching, learning environment, type of books, qualification of teachers, number of teachers, attendance of teachers and students and so on. There has been substantial progress in increasing enrollment with national average now at 98.3 percent (2009-2010) according to official statistics. However, the attendance of pupils in class rooms has declined. In 2007, 73.4 percent students enrolled for Standards I-IV/V were present in class, which has fallen to 70.9 percent by 2011 (EPW, 2012). Despite lack of staff in government schools, teachers remain absent on rotational bases. Furtherance, due to vacancies for teacher, absenteeism of teachers and poor infrastructure in government schools classrooms are multi-grade, i.e. one teacher attending to children from different grades in a single classroom. The attendance of teachers and students in schools is directly related with the quality of education.

**Conclusion:** Every Indian child now has a precious constitutional right to have free and

compulsory education from the ages of 6 to 14 years of age. The governments will onus all the expenses of schooling. The act has mandated for private schools to reserve quarter of classroom strength for disadvantaged groups of society, which will change the structure of classrooms in elite schools to school who are not yet enrolled. However, there are many apprehensions with regard to achieving desired goals through RTE. By pressing for 25 percent reservation for the 'weaker and disadvantaged sections' of society, government has acknowledged poor quality in government schools where more than 90 percent of households in the country will have to enroll their children even if 25 percent reservation is implemented in true sense. This means that there will be further diversification of society in India. There are also concerns whether those enrolled in private schools will cope and adjust with education system and culture of elite schools. There are many other draw backs which are pressing and challenging in the way of RTE: quality education, realization, economical hurdles, trained teachers and reservations problems are some major concerns. Despite the flaws in the way of RTE Act, it is important to simultaneously ensure proper implementation and realization of this fundamental right of the children.

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