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## Right to education: Challenges and opportunities

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### Abstract

The Right of Children to Free and Compulsory Education Act, 2009, popularly known as the Right to Education Act (RTE Act), is a Central legislation that details the aspects of the right of children of age six to fourteen years to free and compulsory elementary education (Classes I to VIII). This is now a Fundamental Right under India's Constitution (Article 21A). The Right to Education act has laid down a comprehensive standard to be maintained by schools and authorities for creating a conducive environment for learning. However, we constantly hear reports regarding malpractices and poor implementation of the RTE act. The right to education has got considerable recognition in the national as well as international arena. The Indian Constitution itself was amended so as to include right to education as a fundamental right. Moreover, the Parliament has enacted a statute to regulate the implementation of the said right. This is a humble attempt to evaluate the right to education of the children in India as available to them now and the changes that may come across in the near future.

**Keywords:** Education, children, right, basic provisions

### Introduction

The Article 45 of the Constitution of India states, "The State shall *endeavour* to provide, within a period of ten years from the commencement of the Constitution, for free and compulsory education for all children until they complete the age of fourteen years." Consequently education is included in the Directive Principles of State Policy and not in the section on fundamental rights. However, education remained a neglected area of state policy with universalization of elementary education continuing to be a distant goal. Efforts from educationists, academics and civil society groups that focused on a rights based approach finally yielded results in 2002, when the 86th Constitutional Amendment was passed by Parliament and Article 21A, which makes right to education a fundamental right, was included in the Constitution. In doing so, it put the Right to Education on par with the Right to Life stated in Article 21. Article 21 A states: "the state shall provide free and compulsory education to all children of the age of 6 to 14 years as the state may, by law determine".

Following from this a Right to Free and Compulsory Education Act (RTE) was drafted and passed in Parliament on August 27, 2009, notified on February 16, 2010 to come into effect from April 1, 2010. This Act may be called the Right of Children to Free and Compulsory Education Act (RTE) 2009. The RTE Act also aims at reaching to the unreached and disadvantaged groups with providing specific provision of Free and Compulsory Education for every child who is above six years of age and has not yet been admitted to any school or though admitted, could not complete his or her education, then, he or she shall be admitted in a class appropriate to his or her age. To accomplish this task there is a provision in RTE Act for Special Training for such children in order to be at par with others.

### Historical Background of the RTE Act (2009)

After independence, Article 45 under the newly framed Constitution stated that the state shall endeavour to provide free and compulsory education to all children until they complete the age of fourteen years within a period of ten years from the commencement of this Constitution. 86<sup>th</sup> Amendment Act (2000) via Article 21A (Part III) seeks to make free and compulsory education a Fundamental Right for all children in the age group 6-14 years. The amendment also introduced a new article 21 A, which imposes a duty on parents and guardians to provide their children with educational opportunities. In October, 2003 a first draft of the legislation envisaged in the above Article, viz., Free and Compulsory Education

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for Children Bill, 2003, was prepared and posted on this website in October, 2003, inviting comments and suggestions from the public at large.

In 2004, subsequently, taking into account the suggestions received on this draft, a revised draft of the Bill entitled Free and Compulsory Education Bill, 2004, was prepared. In June, 2005, the CABE (Central Advisory Board of Education) committee drafted the 'Right to Education' Bill and submitted to the Ministry of HRD. MHRD sent it to National Advisory Committee (NAC) where Mrs. Sonia Gandhi is the Chairperson. The National Advisory Committee (NAC) sent the bill to Prime Minister of India for his observation. The finance committee and planning commission rejected the Bill citing the lack of funds and model bill was to states for making necessary arrangements (Post- 86th amendment, States had already cited lack of funds at State level). This was revised and became an Act in August, 2009 but was not notified for roughly 7 months.

The Right of Children to Free and Compulsory Education Act came into force from April 1, 2010. This was a historic day for the people of India as from that day the Right to education will be accorded the same legal status as the right to life as provided by Article 21A of the Indian Constitution. Every child in the age group of 6-14 years will be provided 8 years of elementary education in an age appropriate classroom in the vicinity of his/her neighbourhood. For the first time in the history of India it is made a right enforceable by pitting in Chapter 3 of the Constitution as Article 21. This entitles children to have the right to education enforced as a fundamental right. Now every child between the ages of 6 to 14 years has the right to free and compulsory education. This is stated as per the 86<sup>th</sup> Constitution Amendment Act added Article 21A. The government schools shall provide free education to all the children and the schools will be managed by school management committees (SMC). Private schools shall admit at least 25% of the children in their schools without any fee. 'Free' means as removal of any financial barrier by the state that prevents a child from completing eight years of schooling. 'Compulsory' means compulsory admission, attendance and completion of elementary education. 'Compulsion' means as compulsion on the state/ local bodies, rather than targeting parents, fundamental duty of parents to send their children to schools.

### Basic Provisions of the RTE Act (2009)

The Constitution (Eighty-sixth Amendment) Act, 2002 inserted Article 21-A in the Constitution of India to provide free and compulsory education of all children in the age group of six to fourteen years as a Fundamental Right in such a manner as the State may, by law, determine. The Right of Children to Free and Compulsory Education (RTE) Act, 2009, which represents the consequential legislation envisaged under Article 21-A, means that every child has a right to full time elementary education of satisfactory and equitable quality in a formal school which satisfies certain essential norms and standards.

Article 21-A and the RTE Act came into effect on 1 April 2010. The title of the RTE Act incorporates the words 'free and compulsory'. 'Free education' means that no child, other than a child who has been admitted by his or her parents to a school which is not supported by the appropriate Government, 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. 'Compulsory education' casts an obligation on the appropriate Government and local authorities to provide and ensure admission, attendance and completion of elementary education by all children in the 6-14 age group. With this, India has moved forward to a rights based framework that casts a legal obligation on the Central and State Governments to implement this fundamental child right as enshrined in the Article 21A of the Constitution, in accordance with the provisions of the RTE Act.

### The RTE Act provides

- Right of children to free and compulsory education till completion of elementary education in a neighbourhood 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 centred learning.

### Review of Related Literature

M.P. Jain (2010)<sup>[12]</sup>, has explained the various aspect of the various aspect of constitution. The constitutional have also led to increase textual comments. The various examples given here i.e. one of them is The Introduction of Article

21A as a fundamental Right needed a new chapter on education. Consequently volume of the book has been increased Article 21 creatively improve quality of life of people. The court has implied a bundle of rights for people from article 21 such as RTE, right to privacy, right to clean environment etc.

Dr. Mukesh Garg Nareshlata Singla (2012) <sup>[13]</sup> in their article she have observed that Right to education is fundamental right as well as basic human right. This right is not only for development of human but also of its country. This is obligation of government to provide education to citizens. Right to Education Act 2009 was passed on the 4th August 2009 & The Act came in to force on 1 st April 2010. Provides that “the state shall provide free & compulsory education to all children of the age of 6-14 years as the state may, by law determine.” The main objectives in providing education to all.

Sarika Malik, (2013) <sup>[14]</sup> have conducted a study on “Awareness of Right to Education Act among Prospective Teachers” to find out the level of awareness of rural and urban prospective teachers about Right to Education. The findings of the study revealed that the urban and rural prospective teachers ratio is high; there is necessity to develop the awareness towards RTE, which in turn helps them to develop the same among their students.

Ms. Shelly Bhatnagar, Dr. Satish Gill (2014) <sup>[15]</sup> has analyzes that education is remained a neglected area of state policy. In 2002, 86th constitutional Amendment passed by parliament; Article 21A which makes right to education as a fundamental right of the constitution. Article 21A states that “the state shall provide free & compulsory education to all children of the age of 6-14 years as the state may, by law determine.” With all its aim, objective, vision, mission we can say that RTE Act is the Act for future. Through the education individual can develop himself as well as the nation. So the importance of education is increasing by day to day.

Hussain (2014) <sup>[16]</sup> This article emphasises mainly on historical background & the need of RTE Act. 2009, The framers of our Constitution have mentioned this right to education in the Directive Principle of State Policy ( DPSP) with the aim of achieving success within in 10 years of the independence of India, which we could not get within 50 years. Meanwhile so many commissions, policies have adopted by the Government. Therefore ultimately RTE Act 2009 has come into existence. This article also emphasizes on the salient features of the RTE Act, 2009, its Merits & demerits in short and concluded with that society can only grow until & unless we grow our minds.

Chaturvedi & Kuldeep (2015) <sup>[16]</sup> Article emphasis on salient feature of RTE Act 2009 its characteristics and main challenge of implementation. By this act the Government has given guarantee to provide free & compulsory education to all the children from the age group of 6-14 i.e. 8 year of elementary education will be free in the appropriate class room of neighbouring school. The article also emphasizes on National Commission for the protection child rights, the body which was setup for maintaining the implementation of the Act in 2007 itself. The provisions are also covered for Rajasthan State Government’s law on education. Considering the statistical data provided by various national authorities the author reaches to the conclusion that there is failure of RTE Act in implementation & therefore provided some suggestions for satisfaction of the need of the day.

### Objectives of the Study

The purpose of our study is to explore the challenges and opportunities in the right to education act 2009.

### Challenges of the Act

Thought the RTE Act is a positive and historical step, yet there are a number of challenges which are being faced in its implementation. These are;

1. The Right to Education Act is already plagued with various financial hurdles and challenges. The fiscal burden is to be shared to between the centre and the states in the ratio of 55:45 and 90:10 for the North – Eastern States. Uttar Pradesh, Bihar, Punjab and many states have expressed that they would not be able to implement the Act in the absence of funds from the center. The success as far is the financial issues are concerned largely depends upon the centre-state cooperation.
2. The dearth of good and qualified teachers is going to be one of the most crucial challenges faced in implementing the act. In the absence of competent teachers who are considered the pillars of education, it would be next to impossible for the Act to realistically achieve its goals. It is a fact that at any given point, about 25% teachers are on leave in India and a majority of them are unable to do full justice to their professions due to a myriad of reasons. In the face of this, how will it fulfill its promise of providing quality education to all ? It is going to be a huge challenge.
3. The Act provides for admission of children without any certification. However, several states have continues 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 required the documents as a condition to admission.
4. In a survey on ‘Elementary Education in India’, it has been found that almost half of the recognized elementary schools in the country do not have separate toilet for girls. It is going to be challenge to provide the requisite infrastructure that the Act expects.
5. Although the RTE was notified in April, 2010 and all states were asked by the centre to implement it but its efficacy has not completely proven as only 19 states have notified the RTE rules so far.
6. The quality of education provided by the Government system is not good. While it remains the largest provider of elementary education in the country forming 80% of all recognized schools, it suffers from shortages of teachers, infrastructural gaps and several habitations continue to lack schools altogether. There are also frequent allegations of Government schools being riddle with absenteeism and mismanagement and appointments are based on political convenience.
7. Now that right to education has become a fundamental right of each and every child, it should also be applicable to those thousands of students who are being used as child laborers and have been denied education till now.

### Opportunities of the Act

Right to education is one of the best acts, our government has ever introduced. It provided an opportunity for the

children who can't afford to study. Elementary education became necessary under this act.

- To make every child literate.
- It gave them elementary education, so that no one can make fool of them.
- Provides us power on international level. As literacy rate is measure of country's manpower.
- It is possible, but very hard to survive in this mean world but being literate.
- It brought smile on the innocent face of the child, who was earlier unknown about this fascinating world of knowledge.
- Due to the rising demand in education the state started enforcing section 12c of the RTE on small private schools to absorb more children, rather than improving the capacity or the capability of the government schools.
- RTE is forcing several small schools or low cost private schools to be closed, by enforcing in its schedule, which is an administrative burden rather than an academic effort.
- The RTE's schedule to a great extent is input based, which means that it focuses on the material aspect of the schools, rather than measuring the learning outcomes or academic achievements of children in school schooling system.

### Conclusion

It has been ten years since the implementation of RTE Act, but it can be seen that it still has a long way to go to be called successful in its purpose. Even though progress has been made on most of the fronts, there have been many challenges that have worked to negatively affect it. RTE Act has not been up to the mark compared to the promises which it held. The government needs to play a greater role by creating the atmosphere and providing monetary support so that drastic measures can be taken for improvement of child education, and accordingly, create a better future for the individuals as well as the nation as a whole.

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