

# An Evaluation of the Right of Children to Free and Compulsory Education Act, 2009

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**Abstract:** A historic piece of legislation, the Right of Children to Free and Compulsory Education Act 2009 (RTE Act), intends to give all children between the ages of six and fourteen free and compulsory schooling. Pertaining education to the individual from childhood is a age long practice. With the gradual growth of time the concept of education system changes through various phrases. The education is a vital weapon used to shape a nation's destiny by assuring to live a quality life with respect and dignity. The education is a continuous process and dynamic in nature which starts from our birth and ends with our last breath. It is not just acquiring knowledge it's about fostering wisdom, seeking truth and continuously expanding one's understanding. Making education available to everyone, regardless of color, caste, creed, sex, or place of birth, was the dream of those who drafted the Constitution. A new Article 21-A, which recognizes education as a fundamental right of all citizens, was incorporated with the 86th Amendment in 2002. In line with this, the Right of Children to Free and Compulsory Education Act 2009 came into effect on April 1st, 2010. It is a milestone towards realizing the fundamental right to education enshrined in the Indian Constitution. This paper will critically examine the RTE Act highlighting its positive impacts and limitations.

**Keywords:** Right to education, Constitution, Fundamental Right, Legislation, Right to life

## 1. Prolegomenon

Any development must start with education. Education is essential for promoting social progress and national development in addition to giving people the ability to exercise their rights. It provides individuals with the information and abilities needed to actively participate in civic life, make a significant contribution to society, and achieve their goals. Moreover, education also promotes a sense of logicalness, critical thinking and tolerance which are essential for building a harmonious society and meet the societal challenges. But it is disheartening to mention that even after 77 years of independence the rate of even elementary education is still in question. The 86th Constitutional Amendment, which was ratified in 2002, established Article 21-A, which guarantees citizens' fundamental right to an education. Eventually in 2009, the Right of Children to Free and Compulsory Education Act 2009 (RTE ACT) was approved, and on April 1st, 2010, it went into effect. The Act attempts to bring about several notable reforms in India's educational system. If the proposed improvements are put into practice in letter and spirit, the nation's educational system will undoubtedly improve. The efforts of numerous organizations and agencies to guarantee that all children obtain at least a primary education, regardless of their socioeconomic, cultural, or religious position, have resulted in a notable shift in the previous few decades toward the right to education. Following the enormous efforts of educationalists and a historic ruling by the Supreme Court, all Indian children now have the fundamental right to an education.<sup>1</sup>

## Scope of the Study

This paper tries to evaluate the Right of Children to Free and Compulsory Education Act 2009 (RTE Act), highlighting its concept, aims and objectives, historical development. It also lay emphasis about the lacunas which resists in the better implementation of the Act. Lastly some suggestions are given for its fruitful implementation in coming days.

## 2. Methodology

The authors fully depends on various text books, journals, judicial decisions, government notifications and other necessary and relevant official reports. Further the authors relied upon various Academic articles, policy papers evaluation reports from various websites.

## Research Question

- 1) What are the key provisions and legal frameworks of the RTE Act 2009?
- 2) What are the main challenges and barriers faced in the implementation of the RTE Act ?
- 3) What was the need to enact a separate Act to regulate free and compulsory education?

## History of the Right to Education Act

The path to achieve right to education by all was not so easy. One has to travel in a time machine and peep into the vedic period. During that time acquiring of education was within the Brahmin class only, the sundra i.e the untouchables were barred to obtain the education. Later on Buddhist and Jainism removed all the barriers and made education accessible to all. During the medieval period the education

<sup>1</sup> Verma.A, "a Critical Analysis Of The Right Of Children To Free And Compulsory Education Act, 2009", Journal On Contemporary Issues Of Law Vol.3 Issue 12 available at

<https://jcil.lsyndicate.com/wp-content/uploads/2023/06/Asha-Verma-1.pdf> accessed on 11.04.2024

was closely associated with religion so it was denied to the common people. But the scene somewhat changes during the British period where education was provided to people just to fulfill the need of vast politico - administrative machinery.<sup>2</sup> Common people were given education just to train them as a staff, accountant, manager and other subordinate workers. It was in the wake of independence the Indian Constitution under Article 29 and Article 30 upholds the Educational and Cultural Rights of its citizen<sup>3</sup>. Article 45 of the Directive Principles of State Policy stipulates that "the state shall endeavor to provide free and compulsory education for all children until they complete the age of fourteen years, within a period of ten years from the commencement of this constitution."<sup>4</sup> But because of a number of constraints, this goal is not achievable. According to Article 46, "the state shall protect them from social injustice and all forms of exploitation, and shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Schedule Castes and the Schedule Tribes."<sup>5</sup> The Supreme Court reexamined the ruling in *Mohini Jain v. State of Karnataka*<sup>6</sup> in the case of *Unnikrishnan v. State of Andhra Pradesh*<sup>7</sup> maintain that even though the right to education is not formally acknowledged as a fundamental right, it is implied that the right to life guaranteed by Article 21 incorporates the right to education. One could argue that the Article 21 guarantees of the right to life and personal liberty must be interpreted in accordance with the Directive Principles of State Policy.<sup>8</sup> The State Policy Directive Principles by Article 45 to provide early childhood care, protection, and education (later amended by the 86th Amendment Act of 2002). The 86th Amendment Act of 2002 established the Fundamental Duties concurrently with Article 51-A (k) assigns parents or guardians the honorable obligation of offering their wards, or children between the ages of six and fourteen, chances to facilitate their education. This means the state is providing elementary and primary education to all the child of India.<sup>9</sup>

### Aims and Objectives of the Right of Children to Free and Compulsory Education Act 2009

The Right of Children to Free and Compulsory Education Act, 2009, which sought to guarantee that every child has access to a high-quality basic education, is considered to be a historical milestone in India. The Act mandated that in addition to providing free and compulsory education to children between the ages of 6 and 14, the state, families, local governments, and communities also had responsibility. The Act serves as a foundational step towards achieving universal elementary education and empowering children

with the knowledge and skills necessary for their holistic development. Its implementation is crucial for realizing the vision of an inclusive and equitable education system in India. The Act consists of **39 (thirty -nine) Sections** which is divided into **7 (Seven) Chapters**. The objectives of the Act is summarized below<sup>10</sup>:

- According to Section 3 of the Act, all children between the ages of 6 and 14 are entitled to free, obligatory education in a neighborhood school until they have finished their basic education. Furthermore, no child receiving an education will be required to pay any fees, levies, or expenses that would prohibit them from pursuing and finishing their elementary education.<sup>11</sup>
- According to Section 4 of the Act, children who are older than six years and have not been admitted to any school or who have been admitted but have not finished their elementary education are eligible to be admitted to a class that is appropriate for their age. Furthermore, the aforementioned clause stipulates that a kid who is immediately enrolled in a class according to his or her age has the right, within any defined time frame, to get extra training to bring them up to speed with other students. Even the child admitted to obtain elementary education shall be entitled to free education till their completion even after fourteen years of age.<sup>12</sup>
- According to Section 5 of the Act, a child has the right to request a transfer to a different school if their current one does not offer primary education, or if they want to attend a different school both inside and outside of the state due to any factor. In that event the head teacher or other responsible authority of the school must promptly provide a transfer certificate. Admission to the new school cannot be delayed or denied due to non-delivery of the transfer certificate. Additionally, if the transfer certificate is not issued promptly, the present school's head teacher or person in charge will be held liable and may face disciplinary action in accordance with applicable service regulations.<sup>13</sup>
- Section 11 emphasis on preschool instruction. In order to ensure a child's holistic development from the age of three to six, the section emphasizes the significance of early childhood care and formal education.<sup>14</sup>
- The obligation of schools to provide free and compulsory education is expanded by Section 12. This part guarantees that pupils from economically disadvantaged communities will occupy twenty-five percent of the Class I seats in all private schools. This policy seeks to encourage and facilitate access to high-quality education for kids from disadvantaged families.<sup>15</sup>
- Verification of age for admission is covered in Section 14. A child's age for primary school entrance is mostly established by the birth certificates that are provided in compliance with the Births, Deaths, and Marriage

<sup>2</sup> Joshi, S.K., "Journey of Right to Education: A historical perspective", Scholarly Research Journal for Interdisciplinary Studies, Nov- Dec , 2013. Vol II/IX, pp 756-763 available at [https://www.educationforallinindia.com/journey\\_rte\\_historical\\_perspective\\_s.k.joshi.pdf](https://www.educationforallinindia.com/journey_rte_historical_perspective_s.k.joshi.pdf) accessed on 13.04.2024

<sup>3</sup> Laxmikanth.M., "Indian Polity" Mc Graw Hill Education (India) Private Limited , Chennai, 5th Edn,2017

<sup>4</sup> ibid

<sup>5</sup> ibid

<sup>6</sup> 1992 AIR 1858

<sup>7</sup> 1993 AIR 2178

<sup>8</sup> Supra note 3

<sup>9</sup> ibid

<sup>10</sup> The Right Of Children To Free And Compulsory Education Act, 2009, available at

[https://www.indiacode.nic.in/bitstream/123456789/19014/1/the\\_right\\_of\\_children\\_to\\_free\\_and\\_compulsory\\_education\\_act\\_2009.pdf](https://www.indiacode.nic.in/bitstream/123456789/19014/1/the_right_of_children_to_free_and_compulsory_education_act_2009.pdf) accessed on 04.05.2024

<sup>11</sup> ibid

<sup>12</sup> ibid

<sup>13</sup> ibid

<sup>14</sup> ibid

<sup>15</sup> ibid

Registration Act of 1886. Additionally, the clause specifies that any other document required for admission may be used to verify a child's age. It is specifically stated in the clause that no child would be turned away from school because they cannot provide identification as proof of age.<sup>16</sup>

- Section 15 guarantees that no child is unjustly denied access to educational opportunities and works to preserve every child's right to an education, irrespective of when they apply for admission.<sup>17</sup>
- According to Section 16 of the Act, a child cannot be held back, expelled, or forced to complete a board test before completing their elementary schooling.<sup>18</sup>
- The specific prohibition of both physical and mental harassment of children is found in Section 17, which also stipulates that those who violate this provision will face disciplinary action in accordance with the service rules that apply to them.<sup>19</sup>
- According to Section 23, all appointed teachers must meet the minimal requirements set forth by the academic authority and approved by notification from the Central Government.<sup>20</sup>
- Section 25 aims to enhance the quality of education by ensuring an optimal teacher-student ratio and preventing the diversion of teachers from their primary educational duties. It underscores the commitment to improving the learning environment in schools and maximizing educational outcomes for students.<sup>21</sup>
- The significance of a curriculum and assessment system that emphasizes a child's overall growth and well-being in addition to academic learning is emphasized in Section 29. It highlights the value of an inclusive and encouraging learning environment, active learning approaches, and a child-centric perspective.<sup>22</sup>
- Every child who completes elementary school satisfactorily is guaranteed to get a certificate under Section 30.<sup>23</sup>
- According to Section 31 of the Commission for Protection of Child Rights Act, 2005, the National Commission for Protection of Child Rights and the State Commission for Protection of Child Rights, which were established under Sections 3 and 17, play a crucial role in defending and advancing children's right to education. This includes making sure that the law is effectively implemented, responding to complaints, and taking the appropriate enforcement measures.<sup>24</sup>

### Significance of the Right of Children to Free and Compulsory Education Act 2009

The RTE Act plays a significant role in fostering the education which was once a dream of the maker of the Constitution.

- 1) All children between the ages of six to fourteen are entitled to an education devoid of any form of bias

guaranteed under Right to Education Act. In fact, this right gives the state the legal obligation to uphold the child's right to an education.<sup>25</sup>

- 2) The Act also mandate that the teachers appointed for pertaining education to the children must meet the requisite qualification prescribed by the Act and also they are trained to deal with the children between 6 to 14 years of age.<sup>26</sup>
- 3) The very concept of equality and social justice envisage in the Preamble of the Constitution are becoming a reality rather than a myth with the RTE Act.<sup>27</sup>
- 4) Since education falls under the concurrent list therefore RTE Act lays down certain guidelines and policies that need to followed both by Central and State Government and even by local bodies must abide by the rules prescribed in the course of ensuring the education to all.<sup>28</sup>
- 5) The RTE Act indeed emphasizes a zero- tolerance policy towards discrimination against children, particularly those from disadvantaged backgrounds, ensuring their access to free and obligatory education. It also prohibits any form of screening that could lead to discrimination based on factors such as caste, religion, or socio- economic status.<sup>29</sup>
- 6) The RTE Act plays a pivotal role in preventing the extrusion of children from classes up to grade 8 , thereby safeguarding their right to elementary education . This provision ensures that children are not denied education due to factors such as poor academic performances or behavior issues.<sup>30</sup>
- 7) The RTE Act places a strong emphasis on providing high-quality education in addition to guaranteeing access to it. It also set criteria for school infrastructure, such as having enough classrooms, access to clean drinking water, and separate restrooms for boys and girls,etc.<sup>31</sup>
- 8) The very essence of social economic and political justice is present plays a vital role in fostering social integration by ensuring that all children, regardless of their background, have equal access to education. By prohibiting discrimination and promoting inclusivity in school, the Act helps to break down barriers and promotes interaction among students from diverse socio-economic, cultural, and religious backgrounds.<sup>32</sup>
- 9) With the implementation of the RTE Act the rate of enrollment of children has grown tremendously both in the lower and upper level.By making the education free to all helps in removing the financial barrier which was a major constraint in preventing children from attending the school.<sup>33</sup>

<sup>25</sup> <https://www.insightsonindia.com/social-justice/issues-related-to-education-sector/right-to-education/significance-of-rte-act-2009/> accessed on 24.03.2024

<sup>26</sup> *ibid*

<sup>27</sup> *ibid*

<sup>28</sup> *ibid*

<sup>29</sup> *ibid*

<sup>30</sup> *ibid*

<sup>31</sup> *ibid*

<sup>32</sup> *ibid*

<sup>33</sup> *ibid*

<sup>16</sup> *ibid*

<sup>17</sup> *ibid*

<sup>18</sup> *ibid*

<sup>19</sup> *ibid*

<sup>20</sup> *ibid*

<sup>21</sup> *ibid*

<sup>22</sup> *ibid*

<sup>23</sup> *ibid*

<sup>24</sup> *ibid*

10) It is noted that with the implementation of the Act, the literacy rate graph steadily move towards increasing direction since 2010.<sup>34</sup>

### Lacunae in the Right of Children to Free and Compulsory Education Act 2009

The Right to Education Act 2009 is a milestone in providing free and compulsory education for all children aged between 6 to 14 years<sup>35</sup> but yet it suffers from many drawbacks. Some of them are highlighted below:

- 1) **Quality of Education:** Although securing access to education is the main goal of the Act, there are issues with the caliber of education that is being offered. The issues such as teacher absenteeism, inadequate infrastructure, and outdated teaching methods still in practice which directly effect the learning outcomes of students.<sup>36</sup>
- 2) **Inadequate Infrastructure:** Many schools, especially in rural areas, lack basic infrastructure such as proper classrooms, toilets, drinking water facilities and libraries, playground etc. This hampers the learning environment and impacts student attendance and retention.<sup>37</sup>
- 3) **Teacher Quality and Training:** The RTE Act mandates certain teacher- student ratios and qualifications, there are challenges in ensuring the availability of qualified and trained teachers, especially in remote areas. Moreover, ongoing teacher training and professional development are essential but often neglected.<sup>38</sup>
- 4) **Inclusion of Marginalized Groups:** The RTE Act aims to provide education for all, marginalized groups such as children with disabilities, those from socio-economically disadvantaged backgrounds and migrant children may still face barriers in accessing quality education due to discrimination, lack of resources or inadequate support systems.<sup>39</sup>
- 5) **Private Schools and Free Regulation:** The Act requires private schools to set aside a specific proportion of seats for students from economically disadvantaged backgrounds, but there are challenges in ensuring compliance and regulating fees charged by private schools, which can sometimes be prohibitive for disadvantaged families.<sup>40</sup>
- 6) **Monitoring and Enforcement:** There are issues with the monitoring and enforcement mechanisms of the RTE, leading to instances of non-compliance and lack of accountability at various levels of the education system.<sup>41</sup>
- 7) **Early Childhood Education:** The RTE Act primarily focuses on elementary education (6-14) years and doesnot adequately address the need for early childhood

education, which is crucial for a child's overall development and school readiness.<sup>42</sup>

### 3. Suggestion and Conclusion

The goal of RTE Act, 2009 is to impart quality education to all. To enhance the effectiveness of the Act some suggestions are proposed:

- **Increased Budget Allocation:** Adequate budget allocation should be ensured to support the implementation of RTE provisions, including infrastructure development, teacher training, and other educational resources.
- **Focus on Quality Education:** Furnishing education to all means providing quality education. Teacher training programs, curriculum development, and assessment mechanism must be strictly adhere with.
- **Addressing Infrastructure Gaps:** For the better implementation of the Act proper infrastructure must be there in the school particularly in rural and marginalized areas so that the student can access the education to its fullest extent. The Teaching learning material must be there in every school. Moreover, where the infrastructure is not up to mark that should be address and prompt action must be taken in that regard.
- **Teacher Training and Development:** Teacher training programs should be conducted to enhance teaching quality and effectiveness. This training programs includes training on pedagogy, child psychology and inclusive education practices.
- **Monitoring and Evaluation:** Proper monitoring cell should be constituted who will be entrusted to track the implementation of RTE Act at various levels.
- **Parent- Teacher Meeting:** Monthly or quarterly parents teacher meeting should be conducted by the school authority where interaction between parents and teachers would be done regarding their child performance and drawbacks of their child.

The RTE Act has brought a revolution by promoting access to education to all irrespective of any social barriers but still after 14 years of its implementation there's need a continuous effort to overcome all the challenges in upcoming days and ameliorate the quality of education for all children in India.

### Author Profile

**Barnali Chakrabarty** is currently working as an Assistant Professor of Law in Bikash Bharati Law College under University of Calcutta. She started her teaching career in 2019 as an Assistant Professor of Law at Kingston Law College. She has also contributed her writings in various edited books and journals. She has also attended various seminars from her college days and also presented her papers in the same. She passed her BA LLB (Hons) 5 years course from Jogesh Chandra Chaudhuri law college under University of Calcutta securing first class in 2015 and completed her Masters in Law (LLM) course from Jogesh Chandra Chaudhuri law college securing 1st class in 2017. She stood 3rd in her 8th semester examination. Currently she is pursuing her Ph.D in law from Pacific Academy Of Higher Education and Research University.

<sup>34</sup> *ibid*

<sup>35</sup> Sharma.G., "What is Right to Education Act", May 15,2021, available at

<https://timesofindia.indiatimes.com/readersblog/igoravsharma/what-is-right-to-education-act-rte-act-32034/> accessed on 23.04.2024

<sup>36</sup> *Supra* note 3

<sup>37</sup> *ibid*

<sup>38</sup> *ibid*

<sup>39</sup> *ibid*

<sup>40</sup> *ibid*

<sup>41</sup> *ibid*

<sup>42</sup> *ibid*

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