



## Right to Education Act (2009): Base of the education system

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**ABSTRACT:** The idea of a Common School System is as old as Kothari Commission. Kothari Commission or Indian Education Commission, 1964-66 emphasized on the expansion of educational institutions broadly with an accent on equalization of educational opportunities. The committee had recommended education to people of all straits of society and envisaged a Common School System of public education. A recent trend of double standard of education is alarming. The students from government schools are in no way at par with the students from private educational institutions and international schools. The government schools in India remain as an instrument of job security for teachers and peons rather than an accessory to quality education. The campaigning of government teachers at the time of admission as well as inspection irrespective of the lack of infrastructure and other amenities clearly depicts the existing scenario.

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**Key words:** Right to Education, Elementary Education, Students Growth.

**INTRODUCTION:** The Right to Education Act (RTE), enacted in 2009, has ushered in hope for school education in the country. It is the culmination of efforts made by educationists, members of civil society and judiciary for the last many years. Free and compulsory education for all children had been debated even in pre-Independence years. It made its way into the Constitution as a Directive Principle of State Policy under the former Article 45, whereby states were required to ensure provision of free and compulsory education (FCE) to all children till the age of 14 years within a period of 10 years of the formulation of the Constitution. There is enough evidence to suggest that this goal has not been achieved even several decades after India became independent. With the RTE coming into force, there is an expectation that this will finally be translated into provision of quality school education for all children. It is the primary responsibility of the Government to ensure implementation of the Act. Being part of the concurrent list, the Central and state governments are both responsible for ensuring effective implementation of the Act. There has been significant improvement in terms of the number of primary schools, largely due to additional resources made available through the Sarv Shiksha Abhiyaan to bridge existing gaps. The scheme is now being extended to the secondary school level as well. In addition to the Government's initiative, the private sector has also played a role in improving the state of education in the country and continues to do so. This study is an attempt to explore the role the private sector can play in implementation of the RTE.

There are varied opinions on some sections of the Act from different perspectives. The study includes some views and counters those on some aspects of the Act. For instance, inclusion of a schedule to set up norms and standards has by and large been welcomed, although there is a strong opinion that it does not address quality issues adequately. On the contrary, some groups feel that it is not friendly toward small organizations that are making an attempt to reach out to disadvantaged groups, but are not adequately resourced to meet the norms and standards laid down in the Act.

**ELEMENTARY EDUCATION:** Education leads to individual freedom and empowerment, which yields significant societal development gains and makes an individual self-reliant. It is seen as the foundation of society, enabling economic wealth, social prosperity and political stability. Education is therefore increasingly being viewed as a fundamental right across the globe and essential for the exercise of all human rights. All individuals are entitled to education.



Elementary education forms the foundation for all levels of learning and development. It empowers and equips individuals with analytical capabilities, instills confidence and fortifies them with determination to achieve goal-setting competencies. It, therefore, plays a pivotal role in improving the socioeconomic condition of the nation. For any country to grow, it is imperative that it has in place a strong elementary school driven education system.

**PROGRESS IN ELEMENTARY EDUCATION OVER THE YEARS;** The evolution of India's education system has been driven by increased focus on basic elementary education. One of the key achievements of India's education system since Independence has been the consistent rise in the country's literacy rate, which has risen from 18% in 1951 to 74% in 2011. Significant efforts have been made to universalize elementary education in these 60 years. The number of elementary schools and teachers grew significantly during the period 1950–51 and 2004–05. Gross enrolment figures for elementary education also increased from 32 in 1950–51 to 95 in 2004–05. This growth in elementary education in India has largely been the result of the Government's initiatives.

Implementation of elementary education schemes: Schemes such as Sarva Shiksha Abhiyaan (2001) and the Mid Day Meal Scheme (1995) can be given the credit for rapid expansion of the elementary education system in India over the last decade. The Sarva Shiksha Abhiyaan -led to formation of over 200,000 new schools has led to the additional enrolment of over 21 million children. A significant growth has also been witnessed in upper primary schools, which have grown roughly 20 times from 1950–51 to 2005–06.

Since the inception of the Sarva Shiksha Abhiyan, the percentage out-of-school children came down from 18.4% in 2000–01 to 4.3% in 2009. The continual expansion of the elementary education system has also resulted in reduction in the number of out-of-school children in the age group of 6–14 years. The overall gender parity index for elementary education increased from 0.4 in 1950–51 to 0.9 in 2005–06. This is primarily the result of the enhanced participation of girls in the education system. The Government has undertaken various initiatives such as the Mahila Samakhya Project and the District Primary Education Programme (DPEP) in this direction. The DPEP program focuses on formation of village education committees with the large participation of female members to ensure retention. As an incentive, the Government has also given awards to villages for 100% enrolment of girls. India has made substantial progress in achieving its elementary education goals over the last few decades, yet there are certain sections of society that continue to remain significantly underserved.

**RTE ACT 2009 — HERALDING A NEW ERA OF INCLUSIVE GROWTH:** Education is globally recognized as a fundamental human right, and people with access to education can develop the skills, capacity and confidence to secure other rights. The right to education thus acts as an enabling right that functions as the voice through which rights can be claimed and protected. It is therefore an important stepping stone to improve the social situation of the people. Globally, right to education derives its legal basis from Article 26(1) of the Universal Declaration of Human Rights (UDHR)<sup>4</sup>, which states that —Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory.¶ The International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted by the United Nations in 1966, also recognizes everyone's right to education. Article 13(2) of ICESCR<sup>5</sup> requires parties to the covenant to recognize that primary education will be compulsory and available free to all to achieve its realization. Various constitutions around the world recognize the universal nature of the right to education (the Czech Republic, Niger, Spain, Uganda, etc.). However, constitutional provisions of providing free and compulsory education vary across countries in terms of specific segments (primary level — Croatia, Turkey and Kuwait; basic education — Spain and Sweden; secondary level — the Czech Republic and Latvia).

Ever since Independence, India has undertaken several initiatives to achieve universalization of elementary education, which has yielded mixed results. The Right to Education legislation in India has seen a chequered history in evolving from a directive principle to a fundamental right. In 1950, the Constitution articulated its commitment to education through its Directive Principles of State Policy. The 86th Constitutional Amendment was followed by multiple rounds of discussions (tabling of right for free and compulsory education bills by the NDA and UPA governments), which made education a fundamental right for children in the age group of 6–14 years. The Act was introduced in Rajya Sabha in



December 2008. It was passed in the Lok Sabha on 4 August 2009 and the President gave his assent to it on 26 August 2009. The Act came into force on 1 April 2010 as a fundamental right in India.

**CONSTITUTION (EIGHTY SIXTH AMENDMENT) ACT 2002:** The Constitution (86th Amendment) Act 2002 was a diplomatic measure taken by the Government of India when spate of litigations flowed to the courts of India relying on the Supreme Court judgement in Unnikrishnan case. It is evident from the above cited cases. The insertion of Article 21A through the said amendment recognizing Right to Education as a fundamental right was celebrated all over the world. The Act has indeed taken India to the list of a number of countries where education is recognized as a statutory right.

Article 21A states, —The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the state may, by law, determine. The new Article 21A looks like a restatement of Article 45 of the Constitution with slight alterations in the literal sense, has indeed created a wide gap at the practical level. The Article 45 of the Constitution of India states that the state shall endeavour to provide within a period of ten years from the commencement of the Constitution for all children until they complete the age of fourteen years.

The directive of Article 45 and the rule evolved in Unnikrishnan case got diluted through the Constitution (86th Amendment) Act 2002.

- While Article 45 envisages right to education to all children under 14 years, the Amendment Act restricts it to an age group between 6-14 years.
- The added emphasis in the last clause ‘as the state may, by law determine’ is intended to provide wide unjustifiable discretion to the government.
- The inclusion of clause (k) in Article 51A imposing fundamental duty on parent/guardian thereby shifting the responsibility of state to parents and guardians.

**SALIENT FEATURES OF THE ACT — ANALYSIS USING THE 4A FRAMEWORK:** The RTE Act is the first Central Act in the domain of elementary education and aims to increase the accountability of state governments and local administration. The Act has many game-changing features, which are bound to yield significant results. It entails removal of any financial barrier that may prevent any child from availing eight years of elementary education in a neighborhood school. It also specifies minimum norms and standards applicable to schools, including infrastructure. A unique feature of the Act is its focus on increased community participation by setting up of school management committees, which include parents, teachers and elected representatives.

The various features of the Act and their intended application in making education a meaningful right have been analyzed using the 4A framework (availability, accessibility, acceptability and adaptability) developed by former UN Special Rapporteur on the Right to Education Act 6, Katarina Tomasevski. This framework allows development of an enhanced understanding of its key features and their application.

**AVAILABILITY:** This metric of the 4A framework requires education to be free and funded by the Government. Moreover, it needs adequate infrastructure that is supplemented by trained teachers to enable education delivery.

**ACCESSIBILITY:** This metric of the 4A framework requires development of a non-discriminatory system with measures to include the most marginalized.

**ACCEPTABILITY:** The metric requires development of quality content, which is non-discriminatory, relevant and culturally appropriate in nature. It also requires that a school is safe and teachers are professional.

**ADAPTABILITY:** The metric requires that the education system is able to adapt to the changing needs of society and fight social inequalities such as gender discrimination as well as local issues and contexts. This implies that education should be flexible and respond to the needs and abilities of its students meet their best interests and adapt to different contexts.

**CHALLENGES FACED IN UNIVERSALIZING ELEMENTARY EDUCATION IN INDIA:** About 35% of the world’s illiterate population is Indian, and based on historic patterns of literacy growth across the world, India may account for the majority of the world’s illiterate population by 2020. Despite all the



efforts of the Government of India, there are several challenges in achieving universalization of elementary education in the country.

**FINANCING THE RTE ACT:** Establishment of new neighborhood schools and upgrading of school infrastructure would entail significant expenditure in a short span of time on the basis of the time lines mandated

**LACK OF BASIC INFRASTRUCTURE FACILITIES:** Infrastructure development is the key driver for providing universal elementary education to India's children. The ASER study on rural education indicates that one of the major reasons for children staying out of school or being pushed out is inadequate infrastructure. Although infrastructure has developed significantly over the last few years, there is still a considerable gap that needs to be filled to meet RTE norms.

According to the RTE Act, the following infrastructure facilities have to be made available to students by schools within a time frame of three years from the period of notification of the Act. All-weather school buildings should consist of:

- One-teacher classrooms and a head teacher-cum-office room with barrier-free access .
- Separate toilets for boys and girls.
- Safe and adequate drinking water facilities for all children .
  
- A kitchen where the mid-day meal is cooked in the school
- Playground
- Arrangements for securing the school building by a boundary wall
- Despite tremendous efforts being made on infrastructure development, some of the significant shortages in the provision of infrastructure facilities are highlighted below:
- Few classrooms available: According to the DISE Flash Statistics 2009–10 reports, there were only 3.6 classrooms per school on an average. Furthermore, almost 25% of the total enrolment in 2009–10 was in schools with a student classroom ratio >60. The average number of classes in government schools was 3.8, and this figure for private schools was more than double (7.8).
- Lack of sanitation: Only 58% the schools had toilets for girls in 2009–10.
- Lack of computer facilities: Only 39% schools have electricity connection and only 16.65% have computer facilities.
- Lack of transport facilities and safety features: Most government schools do not provide transport facilities, and therefore, students living in rural areas or difficult terrains find it difficult to commute and drop out of school. Furthermore, in such schools, admission of girls is minimal. Almost 50% of the schools do not have boundary walls.

Therefore, in light of the infrastructural issues mentioned above, we see that here is a need for significant effort to be made by all stakeholders to improve available infrastructure in schools according RTE norms.

**LACK OF TRAINED TEACHERS:** The RTE Act attaches immense importance to the role of teachers in improving elementary education by making available professionally trained teachers for the school system.

- According to RTE rules, children have the right to at least one qualified and trained teacher for every 30 pupils. Currently, there is about one teacher for every 34 students. Around 1.2 million additional teachers need to be recruited to fill this gap.
- Furthermore, today, around one out of five primary school teachers do not have the required minimum qualification to ensure children's right to quality learning. Section 23(2) of the Act provides a time frame of five years to ensure that all the teachers in elementary schools are professionally trained. The Ministry of Human Resource Development has estimated that currently there are 0.67million untrained teachers in India.



- The National Council for Technical Education has laid down the minimum qualifications for teachers in schools in 2001 on the basis of the National Council for Teacher Education Act and the RTE Act, according to which teachers appointed by the government or employing authority should be trained and have minimum qualifications for different levels of school education. Within the five-year period, all teachers need to acquire the academic and professional qualifications prescribed by the academic authority under the RTE Act. This is a difficult task.

**AWARENESS:** Awareness among communities about the Act is one of the key aspects for its successful implementation. At present, awareness among people about the Act is low. Unless people understand its contours, there will be limited initiative and ownership on their part. Civil society can play a much larger role in creating this awareness.

**CAPACITY DEVELOPMENT:** Capacity development is required at various levels to operationalize the Act. At the community level, SMCs and Panchayat Raj Institutions (PRIs) need to be trained about their roles and responsibilities; strengthening of systems and human resource development is also needed to make efficient use of available resources, and most importantly, teachers should be trained to impart child-centered education.

**MANAGEMENT:** Management functions should be reviewed and bottlenecks in implementation of the Act identified. Planning and monitoring of programs is as important as improving the quality of education imparted. Both require different set of skills.

Four tiers in the management structure need to be strengthened and empowered to make implementation of the Act more effective.

- The Centre should also address state-specific concerns and provide support, if required. If some states are dragging their feet in implementing the Act, the Centre can demand its implementation by linking it with the SSA and other development grants.
- The State Commission for Protection of Child Rights (SCPCR), which is the monitoring agency for implementation of the Act in different states, has not been effective in many of them. It is therefore important to ensure that an effective SCPCR is in place.
- Local authorities need to play a crucial role. Effective implementation of the Act will depend on how effective Gram Panchayats (GPs) and Nagar Palikas are. They need to be given sufficient resources to implement the Act.
- There should be a bottom-up approach and more autonomy given to schools. These should then be monitored through independent mechanisms.

**INNOVATIONS:** There have been many innovations in the area of classroom transactions and distribution of entitlements from which one can learn. Today, technology can be put to good use to collect information and make planning more need-based. For example, the Delhi Government has initiated online attendance of teachers. The register closes at a specified time and teachers who do not mark their presence up to that time are marked absent. Similarly, teachers desirous of seeking transfers can make online requisitions and even give their preference for the schools to which they wish to be transferred. This helps to streamline the process of attendance and transfers.

**CONCLUSION:** As Alexander Pope has rightly said, —Legislation is only the first step; the real step is execution.‡ Kapil Sibal, the Union Human Resource Development Minister said to journalists on the historic event of bringing RTE Act into effect. — For the first time, education will become a constitutional right. It is a tryst with destiny in the area of education.‡ He alleged it was the accountability of all the stakeholders to effectively implement it. He further added —But to think that we have passed a law and all children will get educated is not right. What we have done is preparing a framework to get quality education. It is for the entire community to contribute and participate in this national endeavor.‡ As is evident from data and feedback from respondents, there are several issues that need to be addressed for effective implementation of the RTE Act. Some of these can be resolved through legal recourse or policy changes; others will need to be addressed as the Act is rolled out. While the ultimate responsibility of providing education rests with the Government, as enshrined in the Constitution, it is evident that the Government’s efforts alone will not be sufficient to provide good quality education to all. There are



several pilot initiatives that have been taken up by non state players. These initiatives are improving certain aspects of education at some of the places where they are being implemented. The formulation of the RTE Act has provided an opportunity to converge different efforts by using it, with the National Policy on Education 1992 as the backdrop. All three categories of stakeholders are contributing to the education sector, but given the size of our country, there are very few examples of effective partnerships across these three categories. Moreover, efforts made to improve the public education system are dispersed and lack a comprehensive approach. As a result, there are several good initiatives, but these are insufficient to make a difference to the existing education system.

It is not possible for any one organization to address all the concerns related to the implementation of the RTE Act, but it is possible to address these through collaborative efforts.

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