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# Legislative Framework of Right of Children to Free and Compulsory Education in India — An Analysis

—Asha Verma

***A**bstract* The influence of education system depends on learning, unlearning and relearning. The social and economic development of the nation depends upon its educated population. For a successful democratic system of government education is the fundamental requirement. The aim of the right to education is to provide everyone with the opportunity to learn and benefit from the education. It is not a matter of privilege but a matter of right. The Right of the Children to Free and Compulsory Education Act was passed by the Indian Parliament on 4th August 2009. This is an historic Act passed by Parliament to ensure free and compulsory education to all the children in the age group of 6-14 years.

Free and compulsory education was also made a fundamental right under Article 21 A of the Indian Constitution in December 2002 by the Constitutional 86th Amendment Act. The rough draft of the Bill was drafted in 2005 which received much opposition due to the mandatory provision to provide 25% reservation in private schools for disadvantaged children. The Right of Children to free and Compulsory Education Act, 2009 is an attempt to truly enforce the Fundamental Right of free and compulsory education in India. This Article aims at highlighting the legislative framework of the Right to free and Compulsory Education and also to critically evaluate the provisions of the Act.

**Key Words:** Right to Education, Free and Compulsory Education, Reservation.

## **INTRODUCTION**

The Indian Constitution is known to be a document committed to social justice. The Preamble to the Constitution of India also focuses on ensuring social justice to all citizens. Social Justice runs like a golden thread through various provisions in the Constitution. Indian Constitutional Law has therefore recognized education as the essence of social transformation, which is also evident from its education specific provisions, specifically the Fundamental Rights and the Directive Principles of State Policy.

The Right of Children to Free and Compulsory Education Act, (hereinafter referred to as the RTE Act) has a long history, having been subjected to numerous rounds of heated debate and philosophical and semantic alterations. It was tailored into existence in the period following the passage of the 86<sup>th</sup> Amendment Act in the year 2002 which declared education as a fundamental right for all children in the age-group of 6-14. The right to education was discussed extensively during the drafting of the Constitution. It is also recognized as a human right to be protected and preserved.

## **HISTORY OF RIGHT TO EDUCATION IN INDIA**

The term 'compulsory education' tends to convey different meanings and interpretations among different classes of people. Most often, compulsory education is interpreted in terms of mandatory attendance requirements, or, as the first stage of education. Not very often, it is considered to mean more or less, the same thing as the right to education. The logic behind compulsory education is to protect children's rights to education because children have no way of asserting that right for themselves when no attention is paid to this need due to neglect or ignorance. Compulsory education is that which must be attended or undertaken by the law of a particular

country or State. The legal requirement may be education from a certain starting age or it may be education up to a certain standard.<sup>1</sup>

Another meaning of the term is a reference to the requirements from the children and government in relation to these stages — the requirement being that children must attend school and the government must provide these schools. Compulsory schooling puts a duty on the child to attend school and a corresponding duty on the parents to send the child to school. A failure to do so will invite State action. When compulsory education is perceived as a matter of right, the attention shifts to ‘self-assertion’. The UNESCO Yearbook of Education (1986)<sup>2</sup> viewed compulsory education as a right. Thus, as a right it has shifted from being applied to the population as a passive subject, to now being mainly applied to the State as an active subject such that the compulsory nature of education refers not only to the child’s obligation to receive it, but also to the State’s obligation to provide it.<sup>3</sup>

Operationally, there is an important difference between compulsory education and compulsory schooling. Compulsory schooling requires compulsory attendance at a public school, i.e. it refers to a specific process whereby education is to be translated. Compulsory education, on the other hand, refers only to the output, i.e. to the fact that learning must take place, giving little or no emphasis to where it takes place, as long as it is actually taking place.

The present State of education legislations in India, by and large, makes education rather than schooling, compulsory. It is a requirement for the child to attend an approved school, but, at the same time, schooling can be exempted if the child is shown to be acquiring the required education through other means.<sup>4</sup>

Emphasis on the output of education appears to have definite advantages in contexts where alternate modes of instruction are more appropriate. Increasingly, technological advances are making it possible for learning to take place through ‘distance’ or ‘open’ schooling modes. As all

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<sup>1</sup> See *International Dictionary of Education*, London, (1977).

<sup>2</sup> See UNESCO, *International Yearbook of Education*, Vol. XXXVIII (1986).

<sup>3</sup> *Ibid.*

<sup>4</sup> See <[https://www.unicef.org/publications/files/Child\\_Friendly\\_Schools\\_Manual\\_EN\\_040809.pdf](https://www.unicef.org/publications/files/Child_Friendly_Schools_Manual_EN_040809.pdf)> accessed 25 June 2018.

educationists are aware, alternate modes of education have been used with advantage in the case of 'difficult to reach populations', and groups with a different culture or way of life- such as, peripatetic teachers for nomadic populations. For those groups who do not have the access to education there can be part time or flexible classes, bridge courses for drop outs, distance education for remote and other areas through post, radio and television etc. Appropriate methodologies need to be evolved to address the needs of slum children, street children and other urban out-of-school children. In opting for compulsory education over schooling, the emphasis will shift from getting the children into schools to the task of determining whether or not they are actually learning. With children's learning being evaluated at definite stages, it will be possible to shift the activity in schools from the ritual aspects of marking the attendance of teachers and pupils to actual teaching and learning. On the other hand, there will be the equally obvious danger of such provisions being misused by State agencies to avoid incurring the cost of providing schools.

The right to education is a fundamental right under Article 21- A of the Constitution of India. Before education was made a fundamental right, many States in India had already amended their existing Acts for free and compulsory education. But the fact remains that they do not by themselves make education 'compulsory', they only 'enable' the 'local authorities' to choose to do so. To make education compulsory under these Acts, further action is required such as: i) Preparation of a scheme by the specified authority to make education compulsory in an area; ii) obtaining Government approval for the scheme; and iii) Notification of a scheme of compulsoriness within the specified area. But awareness of the same has grown since the constitutional amendment. After passing the scheme, the concerned administrators would prepare lists of children who would be going to school and send notices to their parents and ascertain the attendance status of each child. If necessary, they would use coercive measures to bring non-attending children to school.<sup>5</sup>

The enforcement of these Acts necessitated the provisions of many facilities enabling children to make it to school. There seemed little point in

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<sup>5</sup> See <[http://shodhganga.inflibnet.ac.in/bitstream/10603/193260/11/11\\_chapter%203.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/193260/11/11_chapter%203.pdf)> accessed 25 June 2018.

prosecuting those who could not send their wards to schools. During the 1960s there was a decline and discouragement of compulsory education. The Central Advisory Board of Education (CABE) in 1964 recommended that, *“In regard to legislation or compulsion at the primary stage, the Board was of the view that whereas statutory provisions may be necessary for such purposes as collection of fees, the really effective method of achieving universality in education in this age group would be extension of facilities in areas not yet covered and use of persuasion incentives”*.<sup>6</sup> This led to a shift from the introduction of universal free and compulsory education’ to the ‘achievement of the goal of universal education’. But the State failed to make universal elementary education a coherent and successful project. Finally, the Supreme Court in a landmark judgment<sup>7</sup> stepped in and stated, *“In this context we feel constrained to say that the allocation of available funds in India discloses an inversion of priorities”*. It further added that the State could not flout the said directions even after 44 years on the grounds that the article (Article 45) merely calls upon it ‘to endeavor to provide’ the same... With this judgment, the tide turned in the direction of amendment of the Constitution to give to children an unambiguous right to free and compulsory education.

## RIGHT TO EDUCATION AND THE CONSTITUTION OF INDIA

Initially, the Constituent Assembly did not make education a fundamental right. It provided for free and compulsory education as a Directive Principle of State Policy which although was not enforceable by a court of law, was still fundamental in the governance of country and had to be applied as a principle in law-making as a duty of the State. In the original Constitution, education was confined to Part IV of the Constitution. Article 41 of the Indian Constitution provides that the State shall within the limits of its economic capacity and development make effective provisions for securing the right to work, and the right to education.<sup>8</sup> Further, to protect the educational interests of the religious and linguistic minorities special provisions have been made by inserting Fundamental Rights in Part III under Article 30, entitling them to establish and administer educational

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<sup>6</sup> Excerpt from proceedings of the 31st meeting of the CABE, Bangalore, 1964.

<sup>7</sup> See *Unni Krishnan, J.P. v. State of A.P.*, (1993) 1 SCC 645 : AIR 1993 SC 2178.

<sup>7</sup>

<sup>8</sup> *Constitutional Assembly Debates*, (Volume II) (1948-49).

institutions of their choice. Article 26 also provides that all religious denominations and sections thereof have been authorized to establish and maintain institutions for religious and charitable purposes. On the other hand, Part IV of the Constitution, incorporates provisions like Articles 41, 45 and 46 which are non-justiciable rights.

The Indian Constitution under Article 41 casts a duty on the State to inter alia secure education within the limits of its economic capacity. Article 45 casts an obligation on the State in imperative terms: *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 in the country until they complete the age of fourteen years.* In this Article a deadline has been given from the time of its inception. Universalization of Primary Education was accepted as a target to be achieved within a period of ten years. Since then it has been revised several times without achieving the target.<sup>9</sup>

During the drafting of the Constitution M. Ananthasayanam Ayyangar was in favour of making education a non-justiciable right. Speaking on draft Article 36 he stated: *“In Article 36, it is provided that the State should within a period of ten years introduce free and compulsory education.*

On the other hand, K.T Shah contended that, *“primary compulsory education was essential to our very being a nation’.* He referred to the time, when *‘Gopal Krishna Gokahle had proposed a bill for compulsory primary education and the pre-independence government officials rejected it, inter alia on the ground that the expenditure of Rs. 3 crores spend over ten years was too heavy a burden for the exchequer to bear. Within four years however, the Indian Government had spent Rupees 30 crores on the Second World War, about which the people of India were neither concerned not consulted.*<sup>10</sup> *In the draft Constitution the original language of Article 45 (Draft Article 36) was “Every citizen is entitled to free primary education.”*

At the time of the debate Pandit Lakshmi Kant Mitra suggested that in Article 36 the word *“Every citizen is entitled to free primary education should be deleted and should be replaced by “The State shall endeavor to provide, within a period of ten years from the commencement of this Constitution, for free and*

<sup>9</sup> See <[http://14.139.60.114:8080/jspui/bitstream/123456789/12824/1/015\\_Fundamental%20Right%20to%20Education%20%28585-592%29.pdf](http://14.139.60.114:8080/jspui/bitstream/123456789/12824/1/015_Fundamental%20Right%20to%20Education%20%28585-592%29.pdf)> accessed 25 June 2018.

<sup>10</sup> *Ibid.*, p. 480.

*compulsory education for all the children until they complete the age of fourteen years.*"<sup>11</sup>

'Dr. Ambedkar, the Chief Architect' of the Indian Constitution accepted the amendment proposed by Mr. Mitra, who suggested the deletion of the words '*every citizen is entitled to free primary education*'. Dr. Ambedkar also supported that in order to forbid any child being employed below the age of fourteen years, the child must be kept occupied in an educational institution.

Hence, even during the drafting of the Constitution the Drafting Committee members have made an attempt to ensure primary education to children below the age of fourteen years. India's commitment to the spread of knowledge and freedom of thought amongst its citizens is reflected in its Constitution. When the Constitution of India was adopted in the year 1950, the framers of the Constitution were aware of the importance of education as an imperative tool, for the realization of a person's capability and for the full protection of rights. But as the State's economic condition was not sound, it was placed in the Part of the Constitution under the Directive Principles of State Policy. The Directive Principles are fundamental in the governance of the country and cannot be isolated from the Fundamental Rights under Part III of the Constitution. These principles are to be read with the fundamental rights. Indeed, the Preamble of the Indian Constitution also resolves that the objectives enshrined therein can only be achieved if the country's children are also living a dignified life, and without education the dignity of the individual cannot be assured. Therefore, some child specific provisions are laid down in both the 'Directive Principles' as well as under the 'Fundamental Rights'. The engagement of children below the age of fourteen years in hazardous employment has been prohibited under

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<sup>11</sup> Art. 45 under Part IV of the Constitution is the only Article in this part which has set a time-limit of ten years to implement the right to free and compulsory education.



Article 24.<sup>12</sup> To accomplish this objective, various Constitutional mandates on the subject, are contained in the Articles 39(e),<sup>13</sup> 39(f)<sup>14</sup>, 41,<sup>15</sup> 45<sup>16</sup>, and 47.<sup>17</sup>

Education related rights in the context of minorities and the weaker sections of society have been part of the Indian Constitution, right from its inception. The framers of our Constitution were sensitive to the educational interests of the weaker sections of the people, and in particular of the Scheduled Castes, the Scheduled Tribes and women. Therefore, various provisions concerning their educational enhancement are provided in the Constitution. Article 46 as a Directive Principle of State Policy requires States to promote the special care and educational interests of the weaker sections of society.<sup>18</sup> Articles 330, 332, 335, 338, 342 and the entire Fifth and Sixth schedules of the Constitution deal with special provisions for the implementation of the objectives set forth in Article 46. For 'social equality' Article 14 of the Constitution guarantees that all citizens shall be equally protected by the laws of the country. It means that the State will not discriminate against a citizen on the basis of caste, creed, colour, sex, religion or place of birth. Article 15 of the Constitution, as it was originally framed

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<sup>12</sup> Art. 24. Prohibition of employment of children in factories, etc.— No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment: Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-cl. (b) of cl. (7); or such person is detained in accordance with the provisions of any law made by Parliament under sub-cl. (a) and (b) of cl. (7).

<sup>13</sup> That the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.

<sup>14</sup> That children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

<sup>15</sup> The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

<sup>16</sup> 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.

<sup>17</sup> The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

<sup>18</sup> The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

in 1950 did not include the term 'admission to educational institutions'. It was first amended by the Constitution (First Amendment) Act, 1951 enacted on June 18, 1951, as a result of the decision of the Supreme Court in *State of Madras v. Champakam Dorairajan*<sup>19</sup>. The Supreme Court in this case has struck down the community-based reservation in the then Madras State in educational institutions as it violated Article 29(2) a fundamental right which guarantees that no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of the State funds on the grounds only of religion, race, caste, language or any of them. Article 15(4),<sup>20</sup> therefore was carved out as an exception to both Article 15(1) and 29(2). It confers a fundamental right on the socially and educationally backward classes to seek better educational opportunities from the State.

For the effective implementation of the constitutional commitment of compulsory primary education the courts also have shown the activist approach. The courts' initiatives have had a huge impact in terms of mobilizing civil society. It was in fact the Supreme Court's judgments that have given momentum to the creation of an enforceable Constitutional Right to Education in India.<sup>21</sup>

The Central Government responded to the Apex Court's agenda of re-characterization of the right to education as a fundamental right, by establishing two committees to investigate both the desirability and financial implications of amending the Constitution to establish primary education as a fundamental right. The Saikia Committee concluded in 1997 that the Constitution should be amended so as to make free and compulsory education for children in the age- group of six to fourteen years as a Fundamental Right, and to impose a 'fundamental duty' on parents to provide opportunities for education to their children in this age group. Another committee, the Tapas Majumdar Committee concluded in the year 1999 that the universalization of primary education for children aged six to fourteen years requires an additional expenditure of Rs. 136,992 crores

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<sup>19</sup> AIR 1951 SC 226.

<sup>20</sup> Nothing in this article or in cl. (2) of Art. 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

<sup>21</sup> In 1992 and 1993, the Supreme Court of India decided two PIL cases *Mohini Jain v. State of Karnataka*, (1992) 3 SCC 666 : AIR 1992 SC 1858 and *Unni Krishnan, J.P. v. State of A.P.*, (1993) 1 SCC 645 : AIR 1993 SC 2178.

over the period of ten years. The report of the Saikia Committee resulted in an amendment to the Constitution in the year 2002. In the year 2002, the 86<sup>th</sup> Amendment Act to the Constitution of India was passed making education a fundamental right under Article 21-A which provides free and compulsory education for all the children in the age group of 6-14 years. Article 45 provided for early childhood care and education for all children until the age of six years. In Article 51-A a new sub-clause (k) was added, which provides for a fundamental duty of every citizen who is a parent or guardian to provide opportunities for education to all children between the ages of six and fourteen years.

### **CRITICAL ANALYSIS OF RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT, 2009**

The Right to Education Act, 2009 has brought a revolution in ensuring compulsory primary education to children. 'Compulsory education' imposes an obligation on the appropriate government<sup>22</sup> and local authorities to provide and ensure admission, attendance and completion of elementary education by all children in the age group of 6-14 years. With this, India has moved forward to a rights-based framework under the RTE Act that casts a legal obligation on the central and State Governments to implement this fundamental right guaranteed through Article 21-A of the Indian Constitution.

The road-map for universalizing elementary education is derived from the definite time-frames mandated in the RTE Act. It prescribes a time-frame of three years for the establishment of neighborhood schools, provision of school infrastructure with an all-weather building and basic facilities, and provision of teachers as per the prescribed Pupil-Teacher Ratio (PTR) (30:1). Further, the RTE Act stipulates that all untrained teachers in the system must be trained within a period of five years from the date of enforcement of the Act. The rest of the provisions are required to

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<sup>22</sup> See S. 2(a) "appropriate Government" means (i) in relation to a school established, owned or controlled by the Central Government, or the administrator of the Union Territory having no legislature, the Central Government; (ii) in relation to a school, other than the school referred to in sub-clause (i), established within the territory of (A) a State, the State Government; (B) a Union Territory having legislature, the Government of that Union Territory.

be implemented with immediate effect. The RTE Act has had considerable implications for the overall approach and implementation strategies of the Sarva Siksha Abhiyan. With the enactment of the RTE, there was a need to review the interventions under the Sarva Shiksha Abhiyan and align its norms with the RTE mandate. Today, the Sarva Shiksha Abhiyan is the main implementation vehicle for the RTE Act, 2009. A comprehensive monitoring mechanism has also been put in place to ensure the smooth implementation of Sarva Siksha Abhiyan.<sup>23</sup> The major changes in the SSA norms effected by the executive committee of the SSA after January 2010 are:

- (a) *School to be established/ ensured within the limits of the neighborhood as laid down by the State Government pursuant to the RTE Act;*
- (b) *All existing Education Guarantee Scheme centers that have been functioning for two years or more to be upgraded to regular schools, or closed down. No new Education Guarantee Scheme centers to be sanctioned from 2010-11 onwards;*
- (c) *Special training to be carried out for age-appropriate enrollment of out-of-school and dropout children through residential and non-residential courses;*
- (d) *School infrastructure norms to include libraries, including a one-time grant for books worth rupees 3,000 for primary schools and rupees 10,000 for upper primary schools;*
- (e) *Ceiling on school repairs up to a maximum of 5 per cent of the existing schools for each district in a particular year, which inhibited the demand for repairs, removed;*
- (f) *School grant to be utilised for play material and sports equipment, in addition to the existing provision for replacement of non-functional school equipment and other recurring costs such as consumables;*
- (g) *Training norms to include training of resource persons, master trainers, and Block Resource Centre (BRC) and Cluster Resource Centre (CRC) coordinators for up to 10 days each year at 100 per person per day;*

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<sup>23</sup> See <<https://darpg.gov.in/sites/default/files/Sarva%20Siksha%20Abhiyan.pdf>> accessed 25 June 2018.

- (h) *Financial provisions for children with special needs increased from rupees 1,200 to rupees 3,000 per child per year, provided that at least rupees 1,000 per child will be used for the engagement of resource teachers;*
- (i) *Community mobilisation provisions strengthened by raising the number of training days for community personnel from two to six, comprising three-day residential and three-day non-residential training. Financial limits for training also hiked, from rupees 30 to rupees 100 per day per person for residential training and rupees 50 per day per person for non-residential training;*
- (j) *Management cost for districts with small annual plan and size increased from rupees 2 million per district to rupees 4 million subject to the overall ceiling of 6 per cent being maintained at the national level.*

The primary school net enrollment ratio (NER) is the share of children of official primary school age that are enrolled in school. The NER cannot exceed 100 per cent. The gross enrollment ratio (GER) is the share of children of any age that are enrolled in primary school. In India, many children who are beyond primary level are still enrolled in the primary section and hence the GER exceeds 100 per cent.

### **SALIENT FEATURES OF THE ACT**

- Every child between the age group of 6-14 years has the right to free and compulsory education till the completion of elementary education in the neighborhood school.
- No Child shall be liable to pay any kind of fee. Education is free under the Act. It clarifies that 'compulsory education' means an obligation of the appropriate government to provide free elementary education and ensure the compulsory admission, attendance and completion of elementary education of every child in the six to fourteen age group. Free means that no child shall be liable to pay any kind of fee or charge or expense, which may prevent him or her from pursuing and completing elementary education.
- It is the obligation of the government to make arrangements for the non- admitted child to be admitted to an age appropriate class.

- It specifies the duties and responsibilities of the appropriate government, local authorities and parents in providing free and compulsory education, and the sharing of financial and other responsibilities between the central and the State Government.
- It lays down the standards and norms relating to the Pupil-Teacher ratio, building infrastructure, school working days, teaching 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 practically no urban- rural imbalance in teaching positions.
- It also prohibits the deployment of teachers for any non-academic work other than the election duty or census work.
- It provides for appropriate qualified and trained teachers.
- For children between the age group of 6-14 years the Act prohibits-
  - Physical Punishment
  - Screening Procedure for admission
  - Capitation Fee
  - Private tuitions by the teachers
- Running the school without recognition
- The Act provides for the development of curriculum in consonance with the Constitution of India, 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.
- Role of the National Commission for the Protection of Child Rights- National Commission for Protection of Child Rights has been mandated under Section 31 of the Right of Children to Free and Compulsory Education Act, 2009 to examine and review safeguards of the rights provided under the Act and to recommend measures for its effective implementation; to inquire into complaints relating to violation of the child's right to free and compulsory education

and to take necessary steps as provided under Section 15 of the Commission for Protection of Child Rights, 2005.<sup>24</sup> Towards realizing its commitment of Universalizing Elementary Education from 2013 onwards, the Commission has undertaken varied activities providing for equitable, inclusive, quality and sustainable education in India.<sup>25</sup>

- Any person having any grievance relating to the right of the child under this Act may make a written complaint to the local authority having jurisdiction. After receiving the complaint, the local authority shall decide the matter within a period of three months after affording a reasonable opportunity of being heard to the parties concerned. Any person aggrieved by the decision of the local authority may prefer an appeal to the State Commission for Protection of Child Rights constituted under the Act.<sup>26</sup>
- A National Advisory Council consisting of such number of members not exceeding 15 as the Central Government may deem necessary, is to be appointed from amongst persons having knowledge and practical experience in the field of elementary education and child development. The functions of the National Advisory Council

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<sup>24</sup> See <<http://ncpcr.gov.in/index1.php?lang=1&level=1&&sublinkid=11&lid=604>> accessed 15 June 2018.

<sup>25</sup> *Ibid.*

<sup>26</sup> S. 31. Monitoring of child's right to education.—(1) The National Commission for Protection of Child Rights constituted under S. 3, or, as the case may be, the State Commission for Protection of Child Rights constituted under S. 17, of the Commissions for Protection of Child Rights Act, 2005 (4 of 2006), shall, in addition to the functions assigned to them under that Act, also perform the following functions, namely:

- (a) examine and review the safeguards for rights provided by or under this Act and recommend measures for their effective implementation;
  - (b) inquire into complaints relating to child's right to free and compulsory education; and
  - (c) take necessary steps as provided under Ss. 15 and 24 of the said Commissions for Protection of Child Rights Act.
- (2) The said Commissions shall, while inquiring into any matters related to child's right to free and compulsory education under cl. (c) of sub-s. (1), have the same powers as assigned to them respectively under Ss. 14 and 24 of the said Commissions for Protection of Child Rights Act.
- (3) Where the State Commission for Protection of Child Rights has not been constituted in a State, the appropriate Government may, for the purpose of performing the functions specified in cls. (a) to (c) of sub-s. (1), constitute such authority, in such manner and subject to such terms and conditions, as may be prescribed.

shall be to advise the Central Government on implementation of the provisions of the Act in an effective manner.<sup>27</sup>

### CRITICAL ANALYSIS OF THE ACT

- **Exclusion of pre-primary age group children from the ambit of the Right of Children to Free and Compulsory Education Act:** While analyzing the provisions under the Act it has been found that the Act only covers children in the age group of six to fourteen years, as the objective of the Act is to ensure Free and Compulsory Education at elementary level, whereas the children entitled for pre-primary education are excluded. This is a very critical developmental stage in the life of the child. The absence of pre-school education will not be advantageous to the child. On the other hand, the absence of pre-school education from RTE will pave the way for an unregulated system of pre-school education. This will also deprive a large section of society of reaping the benefits of the Act. The author is of the opinion that the government should also allocate a sufficient budget for pre-primary education. There must be an inclusion of pre-primary education in the RTE Act itself so that the children are not deprived of pre-school education.
- **Quality of Education:** Section<sup>28</sup> of the RTE Act, 2009 in light of Article 21-A of the Constitution reveals that it addresses the quality as satisfactory and equitable in formal education which satisfies certain essential norms and standards. It is hardly surprising that the large proportion of what is taught is completely alien and alienating to the average Indian Child. The RTE's success in getting the child

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<sup>27</sup> S. 33. Constitution of National Advisory Council.—(1) The Central Government shall constitute, by notification, a National Advisory Council, consisting of such number of Members, not exceeding fifteen, as the Central Government may deem necessary, to be appointed from amongst persons having knowledge and practical experience in the field of elementary education and child development.

(2) The functions of the National Advisory Council shall be to advise the Central Government on implementation of the provisions of the Act in an effective manner.

(3) The allowances and other terms and conditions of appointment of Members of the National Advisory Council shall be as such as may be prescribed.

<sup>28</sup> S. 3 provides to every child of the age of six to fourteen years the right to free and compulsory education in a neighbourhood school till the completion of elementary education.



to the school is all right, but there are serious concerns about the quality of education which is reflected in learning outcomes. The National Achievement Survey (NAS) published its' report in 2018 by the MHRD, which reveals a pattern of decline in the quality of education -- measured as a "learning outcome" -- as a student progresses to higher classes. Nationally, just over 40 per cent of school children in class eight were able to answer their grade questions correctly, with the situation being worse in junior classes.<sup>29</sup>

- **Public v. Private Schools:** In the recent past, there has been a mushrooming of private schools. Many of these schools are delivering results as per the expectations of parents. As a result, there is an increase in the percentage of children, who are going to these schools, whereas the trend is reversed in the case of the government schools. With a nation of 260 million children attending over 1.5 million schools, education is at once deeply personal and intensely political for Indians. Over the last decade, we have seen a drastic change in the ownership of schools, with private schools, though fewer in number, multiplying rapidly.
- As of 2011, there were 170 million children enrolled across government and private schools. From 2011 to 2015, based on reported data from the Unified District Information System for Education (U-DISE), the total enrolment in government schools fell by 9 per cent, or 11.1 million students.<sup>30</sup>

However, overall student enrolment in schools did not fall during this period. The drop in government school enrolment was accompanied by a 36 percent increase (around 16 million students) in private school enrolment. While there are different government categories of private schools, one category has been growing rapidly across rural and urban India: budget private schools (BPS).

- **Starvation of Funds:** Under the RTE there is sharing of funds between the central government and the State Government. There

<sup>29</sup> See <<https://timesofindia.indiatimes.com/home/education/news/absence-of-benchmarks-impacting-quality-of-education-in-govt-schools/articleshow/63879823.cms>> accessed 4 June 2018.

<sup>30</sup> See <<http://idronline.org/budget-private-schools-education-india/>> accessed 4 June 2018.

is a significant shortfall of funds for the purpose of implementing the provisions under the Act.<sup>31</sup> One of the problems for the effective implementation of the RTE Act is the lack of finance. Union Budget 2017-2018 has been very disappointing for the education sector. A higher allocation of resources for school education from pre-school to secondary education was expected. But after a long year of waiting, school education has been totally neglected in the budget. The budget has ignored the effective implementation of the Right to Education Act (RTE) and a meagre increase in the Sarva Shiksha Abhiyan (SSA) budget — by Rs 1,000 crores is not going to help in any way to implement the RTE Act meaningfully.

- **Right Based Approach:** The Centre should undertake a detailed evaluation of all the existing educational policies and schemes using the rights based approach. There is an urgent need to consolidate the experiences of providing elementary education in the last six decades and evolve a realistic pro-child rights based policy on education, which may then be translated into legislation. The institutional framework required to implement such a policy can also be determined only after the policy itself is evaluated and updated.

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<sup>31</sup> S. 7. Sharing of financial and other responsibilities.—(1) The Central Government and the State Governments shall have concurrent responsibility for providing funds for carrying out the provisions of this Act.

(2) The Central Government shall prepare the estimates of capital and recurring expenditure for the implementation of the provisions of the Act.

(3) The Central Government shall provide to the State Governments, as grants-in-aid of revenues, such percentage of expenditure referred to in sub-section (2) as it may determine, from time to time, in consultation with the State Governments.

(4) The Central Government may make a request to the President to make a reference to the Finance Commission under sub-cl. (d) of cl. (3) of Art. 280 to examine the need for additional resources to be provided to any State Government so that the said State Government may provide its share of funds for carrying out the provisions of this Act.

(5) Notwithstanding anything contained in sub-s. (4), the State Government shall, taking into consideration the sums provided by the Central Government to a State Government under sub-s. (3), and its other resources, be responsible to provide funds for implementation of the provisions of the Act.

(6) The Central Government shall—

- (a) develop a framework of national curriculum with the help of academic authority specified under S. 29;
- (b) develop and enforce standards for training of teachers
- (c) provide technical support and resources to the State Government for promoting innovations, researches, planning and capacity building.

## SUGGESTIONS AND RECOMMENDATIONS

- The States should prepare a set of model rules to effectively implement the right to education. The model rules should set out the procedure to effectively implement the RTE Act. The rules should clearly identify the kind of infrastructure, the mode of appointment of teachers and the ways to improve the quality of education. Although, the RTE Model rules of February 2010 are already in existence, there is a need to reassess those rules for effective implementation of the Act.
- Although the RTE Act is made applicable to children between the age group of 6- 14 years, efforts should be made to include more children under its ambit irrespective of the age- group.
- States should make an effort to appoint trained and qualified teachers. There is a shortage of teachers in schools. Therefore, there is a need to appoint a sufficient number of teachers. According to the records, there are 3,423 primary teachers and 1,794 para teachers (Shiksha Mitra) while, as per the norms of RTE Act, there should be 6,148 teachers for the number of children enrolled under RTE Act.<sup>32</sup>
- There is also a need to ensure that government schools have proper infrastructure. The schools must be well equipped so that the students can get better academic environments.
- The School Management Committee should take up the responsibility of spreading awareness about the Act. At the Panchayat Level and community level the people must be encouraged to send their children to school.
- The commercialization of education should be avoided at all costs; the public private partnership (PPP) model should be avoided in primary education.
- There must also be a complete abolition of Child Labour so that children can go to school and get primary education.

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<sup>32</sup> See <https://timesofindia.indiatimes.com/city/varanasi/Shortage-of-teachers-cripples-right-to-education/articleshow/12614871.cms> accessed 4 June 2018.

- MGNREGA has a very effective auditing scheme which has helped in effective implementation of the scheme in all the States. A similar auditing scheme is required for the Right of Children to Free and Compulsory Education Act.

## CONCLUSION

In view of meeting the challenges and surmounting the hurdles in the way of effective implementation of the Right to Education Act, it is very much required to concentrate all efforts to truly implement it. It is not only the responsibility of the Central or the State Government but each individual to implement it. Community Participation and coordination can also play an important role. There is also a need to increase the budget allocated for the purpose of elementary education. Accountability and transparency have to be increased in the effective implementation of the Act. There is a need to focus on qualitative improvement of the whole program. The Right to education is not only limited to certain geographical areas but there is a need to effectively implement the Act at the global level.

As is evident from the study made in this article, 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 need to be addressed. The RTE has many provisions for ensuring accountability through decentralization, including the creation of schools management committees empowered to make plans and monitor school-level expenditures. But as is well known in India, the devil lies in the implementation. How effectively these accountability provisions will work on the ground depends on getting the 'right' design that will ensure accountability and transparency in the implementation process. Despite the flaws in the Act, it is equally important for us to simultaneously ensure its proper implementation. Besides bringing about design changes, we as responsible civil society members need to make the Government accountable through social audits, filing Right to Information applications and demanding our children's right to quality elementary education.

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