

RIGHT TO EDUCATION - LEGAL SERVICES INDIA

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ABSTRACT

Present Act has its history in the drafting of the Indian constitution at the time of Independence but is more specifically to the Constitutional Amendment of 2002 that included the Article 21A in the Indian constitution making Education a fundamental Right. This amendment, however, specified the need for a legislation to describe the mode of implementation of the same which necessitated the drafting of a separate Education Bill. It is the 86th amendment in the Indian Constitution. A rough draft of the bill was prepared in year 2005AD. It caused considerable controversy due to its mandatory provision to provide 25% reservation for disadvantaged children in private schools. The sub-committee of the Central Advisory Board of Education which prepared the draft Bill held this provision as a significant prerequisite for creating a democratic and egalitarian society. Indian Law commission had initially proposed 50% reservation for disadvantaged students in private schools. The Right of Children to Free and Compulsory Education Act or Right to Education Act (RTE) is an Act of the Parliament of India enacted on 4 August 2009, which describes the modalities of the importance of free and compulsory education for children between the age of 6 to 14 years in India under Article 21A of the Indian Constitution. 'Compulsory education' casts an obligation on the appropriate Government and local authorities to provide and ensure admission, attendance and completion of elementary education by all children in the 6-14 age group. With this, India has moved forward to a rights based framework that casts a legal obligation on the Central and State Governments to implement this fundamental child right as enshrined in the Article 21A of the Constitution, in accordance with the provisions of the RTE Act.17

Keywords: *Indian constitution, Education a fundamental Right, Children.*

INTRODUCTION

Education is a fundamental human right and essential for the exercise of all other human rights. It promotes individual freedom and empowerment and yields important development benefits. Yet millions of children and adults remain deprived of educational opportunities, many as a result of poverty. Normative instruments of the United Nations and UNESCO lay down international legal obligations for the right to education. These

instruments promote and develop the right of every person to enjoy access to education of good quality, without discrimination or exclusion. These instruments bear witness to the great importance that Member States and the international community attach to normative action for realizing the right to education. It is for governments to fulfill their obligations both legal and political in regard to providing education for all of good quality and to implement and monitor more effectively education strategies. Education is a powerful tool by which economically and socially marginalized adults and children can lift themselves out of poverty and participate fully as citizens. India is home to 19% of the world's Children. What this means is that India has the world's largest number of youngsters, which is largely beneficial, especially as compared to countries like China, which has an ageing population. The not-so-good news is that India also has one-third of the world's illiterate population. It's not as though literacy levels have not increased, but rather that the rate of the increase is rapidly slowing. The right to education is a universal entitlement to education. This is recognized in the International Covenant on Economic, Social and Cultural Rights as a human right that includes the right to free, compulsory primary education for all, an obligation to develop secondary education accessible to all, in particular by the progressive introduction of free secondary education, as well as an obligation to develop equitable access to higher education, ideally by the progressive introduction of free higher education. The right to education also includes a responsibility to provide basic education for individuals who have not completed primary education. In addition to these access to education provisions, the right to education encompasses the obligation to rule out discrimination at all levels of the educational system, to set minimum standards and to improve the quality of education.

OBJECTIVE OF THE PAPER

1. To analyze the implementation of Right to Education Act, 2009 in India.
2. To analyze the varied legislative and judicial initiatives undertaken to achieve the 4A's of the right to education.
3. To discuss and critically analyze the pertinent lacunas.
4. To suggest the potential solution and recommendations to improve the current state of affairs.

LEGAL BACKGROUND UNDER INDIAN CONSTITUTION

The following provisions have a great bearing on the functioning of the educational system in India:

1. **Article 28:** According to our Constitution **Article 28** provides freedom as to attendance at religious instruction or religious worship in educational institutions.
2. **Article 29:** This article provides equality of opportunity in educational institutions.
3. **Article 30:** It accepts the right of the minorities to establish and administrate educational institutions.

4. **Article 45:** According to this article “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 14 years. “We notice that the responsibility for universal elementary education lies with the Central Government, the State Governments, the Local Bodies, and voluntary organizations.
5. **Article 46:** It provides for special care to the promotion of education and economic interests of the scheduled caste, scheduled tribes and the weaker sections of society.
6. **Article 337:** This provides for special provision with respect to educational grants for the benefit of Anglo-Indian community.
7. **Article 350A:** This article relates to facilities for instruction in mother tongue at primary stage.
8. **Article 350B:** It provides for a special offer for linguistic minorities.
9. **Article 351:** This article relates to the development and promotion of the Hindi language. The seventh schedule of the Indian Constitution contains legislative powers under three lists viz. The Union List, the State List and the Concurrent List.

MAIN FEATURES OF RTE ACT

- 1) Every child of India in the 6 to 14 years age group; has a right to free and compulsory education in a neighbourhood school till the achievement of elementary education.
- 2) Children who have either dropped out from the school or have not be present at any school will be enrolled in the schools and no school can reject them for taking admission.
- 3) Private and unaided educational institutes will have to reserve 25 percent of the seats for the students belonging to economically weaker section and disadvantaged section of the society in admission to class first (to be reimbursed by the state as part of the public-private partnership plan).
- 4) All schools except government schools are required to be recognized by meeting the specified norms and standards within 3 years, failing of which they will be penalized for up to Rs. one lakh. It also prohibits all unrecognized schools from practice and makes provisions for no donation or capitation fees and no interview of the child or parent at the time of admission.
- 5) For the purpose of admission in a school, the age of a child shall be determined on the basis of certificate issued in accordance with the provisions of the **Births, Deaths and Marriages Registration Act, 1856** or on the basis of such other document, as may be prescribed.
- 6) The National Commission for Protection of Child Rights (NCPCR) and state commissions will monitor the implementation of the Act.

7) All schools except private unaided schools are to be managed by school managing committees with 75 percent parents and guardians as members.

8) Child's mother tongue as medium of instruction, and comprehensive and continuous evaluation system of child's performance will be employed.

9) Financial burdens will be shared by the centre and the state governments in the ratio of 55:45 and this ratio is 90:10 for the northeastern states.

Various initiatives like Five year plans, *Sarva Siksha Abhyan (SSA)*, Mid Day Meal Scheme, *Rashtriya Madhmayak Siksha Abhyan (RMSA)* were launched by the central government to promote universalisation of primary education before the induction of the RTE Act. To make this act most effective tool for eradication of illiteracy, we have to plug the lacunae based on the experience gained through earlier launched schemes and follow the track of roles being played with different parties and to take remedial measures to prevent the deviations from the set path.

MECHANISM AVAILABLE IF RIGHT TO EDUCATION IS VIOLATED

The National Commission for the Protection of Child Rights shall review the safeguards for rights provided under this Act, investigate complaints and have the powers of a civil Court in trying cases.

States of Indian union should constitute a State Commission for the Protection of Child Rights (SCPCR) or the Right to Education Protection Authority (REPA) within six months from 1st April, 2010. Any person wishing to file a grievance must submit a written complaint to the local authority (Block Education office/Zonal Education Office, etc.) or even at the Manipur State Commission for protection of child Rights as its office has been operative or National Commission for protection of child rights for that matter.

Finally complaints can also be taken to law courts, as the right to education is now an enforceable fundamental right of all children between the age-group of 6-14 year. Each child to get free uniform, books under RTE

Each child from class I to class VIII in the country will be provided free textbooks and uniforms, if a roadmap prepared by the Centre to implement the Right To Education Act (RTE) is accepted by the states.

The roadmap to implement the Right of Children to Free and Compulsory Education Act was discussed at a meeting of state Education Secretaries recently.

According to the minutes of the meeting:

1. Nearly 7.8 lakh additional classrooms and seven lakh girls' toilets will have to be created to implement the new law which has come into force from April 1. The government will spend Rs 1.71 lakh crore in the next five years for implementing the Act.
2. Each child will be provided uniforms at Rs 400 per annum. Many states are already providing uniforms from their own budget. "But the uniforms will have to be provided by the state governments. They need to agree to this provision and incorporate it in their rules," a HRD Ministry official said.
3. Every child will be provided free textbooks while a child with special need will get Rs 3,000 per annum for inclusive education. Similarly, Rs 10,000 will be given for home-based education for severely disabled children.
4. There will be a requirement of additional 5.1 lakh teachers to meet the pupils-teacher ration of 30 for one as per the RTE Act. In UP, there is a requirement for 1.5 lakh teachers, followed by Bihar and Gujarat (0.5 to one lakh each), according to the minutes of the meeting.
5. The Rs 1.71 lakh crore will be spent on provision of access, infrastructure, training of untrained teachers and for intervention for out-of school children. The teachers' salary and civil work will have maximum financial requirements of 28 per cent and 24 per cent respectively.
6. Nearly 17 per cent of the total estimate will be spent on child entitlement, while nine per cent will go to special training for out-of-school children. School facilities will require eight per cent of this money and inclusive education will need six per cent.
7. The 7.6 lakh untrained teachers will be provided training in next five years. Maximum number of untrained teachers are in Bihar, Jharkhand and the northeastern states.
8. The RTE stipulates barrier-free education for children with special needs and one classroom per teacher. About 7.8 lakh additional classrooms will be required. Majority of these classrooms will be Uttar Pradesh and Bihar (2.5 lakh each) followed by West Bengal (1.3 lakh) and Assam (30,000).
9. There are nearly 27,000 'kuchcha' school buildings which will have to be upgraded. Nearly seven lakh toilets for girls will be required, including 90,000 in Bihar, 63,000 in Madhya Pradesh and 54,000 in Orissa. About 3.4 lakh schools will require drinking water facility.

CHALLENGES AHEAD

I. State Governments' Apathy:

i) Lack of commitment

ii) Poor economic conditions of the States

III) To maintain pupil-teacher ratio as per the Act, appear a distant dream.

2. Availability of Infrastructure Facilities under the Act:

i) Establishment of Primary Schools within one kilometer and upper Primary Schools within three

kilometer distance.

ii) Well equipped classrooms, library, laboratory, play ground, drinking water and toilet facilities ect.

Suggested strategies to implement the given provisions in the Right to Education Act, 2009 in all the government schools of Manipur in particular:

1. Each and every government school must form a school management committee as prescribed

to i) effectively monitor the working of the school;

ii) prepare and recommend the school development plan;

iii) monitor the utilization of grants;

iv) check the performance and attendance of teachers (as they are accountable to school management committee);

v) perform other functions as may be prescribed.

2. All the School Management Committees of every Sub-Division/District of Manipur must form a common platform eg. like Joint Action Committee (JAC) to put up a concerted action to implement the cherished provisions of the Right to Education Act, 2009.

3. While the Central and State Governments have their full share of responsibilities in term of budget, it is also a community participation and involvement of local NGOs/communities which can make marked difference in meeting the challenges of implementing the Right to Education Act.

CODE OF CONDUCT FOR THE POLICE IN INDIA

(Issued by the Ministry of Home Affairs and communicated to the Chief Secretaries of all the States/Union Territories and Heads of Central Police Organization on July 4, 1985.)

1. The police must bear faithful allegiance to the Constitution of India and respect and uphold the rights of the citizens as guaranteed by it.

2. The police should not question the propriety or necessity any law duly enacted they should enforce the law firmly and impartially with doubt fear or favour, malice and vindictiveness.

3. The police should recognize and respect the limitation of their powers and functions. They should not usurp or even seem to usurp the functions of the judiciary and sit in judgment on cases to avenge individuals and punish guilty.

4. In securing the observance of law or in maintaining order, the police should as far as practicable, use the methods of persuasion, advice and warning. When the application of force becomes inevitable, only the irreducible minimum force in required in the circumstances should be used.

5. The prime duty of the police is to prevent crime and disorder and the police must recognize that the test of their efficiency is the absence of both and not the visible evidence of police action in dealing with them.

6. The police must recognize that they are members of the public, with the only difference that in the interest of the society and on its behalf they are employed to give full time attention to duties which are normally incumbent on every citizen to perform.
7. The police should realize that the efficient performance of their duties will be dependent on the extent of ready cooperation that they receive from the public. This, in turn, will depend on their ability to secure public approval of their conduct and action and to earn and retain public respect and confidence.
8. The police should always keep the welfare of the people in mind and be sympathetic and considerate towards them. They should always be ready to offer individual service and friendship and render necessary assistance to all without regard to their wealth and/or social standing.
9. The police should always place duty before self should maintain calm in the face of danger, scorn or ridicule and should be ready to sacrifice their lives in protecting those of others.
10. The police should always be courteous and well mannered; they should be dependable and impartial; they should possess dignity and courage; and should cultivate character and the trust of the people.
11. Integrity of the highest order is the fundamental basis of the prestige of the police. Recognizing this the police must keep their private lives scrupulously clean, develop self-restraint and be truthful and honest in thought and deed, in both personal and official life, so that the public may regard them as exemplary citizens.
12. The police should recognize that they are full utility to the State is best ensured only by maintaining a high standard of discipline, faithful performance of duties in accordance with law and implicit obedience to the lawful directions of commanding ranks and absolute loyalty to the force and by keeping themselves in the state of constant training and preparedness.

CONCLUSION

As per UNICEF data records the adjusted primary net enrolment rate for the year 2014-15 was 91 and 90 for girls. About 31 million girls across the globe do not have access to primary education. Equality in the sexes in terms of their access to education and health has an intrinsic value in its own light. In India, the total enrolment in primary schools in India during the year 2014-15 was 1, 97,666 where only 95,556 of them were girls. Young girls in India are often forced to or voluntarily drop out of schools since they either have to look after their younger siblings or have to contribute to the household chores. Centres opened by Oxfam India in different areas in priority and priority plus states help both school going and non-school going kids to be at par with the school curriculum. The non-school going kids are prepared so that they are able to appear for the admission tests in schools and get enrolled in an age-appropriate class. A child who was unable to read or write is also taught in a manner that suits his interests leading to maximum learning. If a child fails or is unable to clear her tests or exams she becomes demotivated to continue her studies. Community organizations help these children to complete their schooling through registrations with NIOS. These community-based organizations also offer various vocational courses like English speaking, stitching, BPO service calling for the girls to be able to be economically dependent. If educated, girls can contribute equally

to economic development thus reducing gender imbalances in terms of education which enhances human capital formation. An extensive study on the human capital theory suggests that education plays a major role in increasing the productivity of the economy by increasing the factor output per worker. Education and human resource development are at the center of long-term economic developmental plans. The lack of safety and security also leads to girls discontinuing school. Morning school for girl students is followed by afternoon school for boys. Senior students often complain that the boys tease and follow them home at the time when their school is over. Due to they are earlier complains police patrolling had increased when the girls came out of school however as soon as the number of policemen decreased he boys continued to harass them. Many girls had dropped out of school because their parents believed that it was no longer safe to send their daughters to school. Despite continuous complaints to both the police as well as the SMC members the problem still persists. The NCPCR has introduced new guidelines for the health, hygiene, safety, and security of students both in private and government schools. The new guidelines point out that girls must be taught about menstrual hygiene and be supported so that they do not miss school. They also state that schools should ensure zero tolerance on any matter related to sexual abuse of a child and stringent action shall be taken against the perpetrators of law.

An educated girl also understands the high importance of education for her future generations and is able to create a better lifestyle and provide better healthcare to her children. Apart from this, educating a girl child will directly reduce infant and maternal mortality rates, child marriages, domestic and sexual violence in families. An educated girl is also more likely to participate in political discussions, meetings, and decision-making leading to the formation of a more representative and democratic government.

REFERENCES

1. "Provisions of the Constitution of India having a bearing on Education". Department of Higher Education. Archived from the original on 1 February 2010.
2. Aarti Dhar (1 April 2010). "Education is a fundamental right now". *The Hindu*.
3. "India launches children's right to education". *BBC News*. 1 April 2010.
4. "India joins list of 135 countries in making education a right". *The Hindu News*. 2 April 2010.
5. "Right to Education". *LawJi.in* : one-stop destination for all law students. Selva, G. (22 March 2009). "Universal Education in India: A Century Of Unfulfilled Dreams". PRAGOTI..
6. Seethalakshmi, S. (14 July 2006). "Centre buries Right to Education Bill – India – The Times of India". *The Times of India*.
7. "Microsoft Word - Final Right To Education Bill 2005 modified-14.11.2005.doc" (PDF).
8. Minority institutions are exempted from Right to Education Act
9. "Cabinet approves Right to Education Bill". *The New Indian Express*. 2 July 2009.
10. "Rajya Sabha passes Right to Education bill". *The News Indian Express*. 20 July 2009.
11. "Parliament passes landmark Right to Education Bill". *The Indian Express*. 4 August 2009.
12. "The Right of Children to Free and Compulsory Education Act, 2009 notified". *Press Information Bureau*. 3 September 2009.

13. "Right to Education Bill 2009" (PDF)
14. "Prime Minister's Address to the Nation on The Fundamental Right of Children to Elementary Education". Pib.nic.in.
15. "Cabinet clears long-pending Education Bill". The Hindu. New Delhi. 1 November 2008.
16. Sripathi, V.; Thiruvengadam, A. K. (2004). "India: Constitutional amendment making the right to education a Fundamental Right". International Journal of Constitutional Law. **2**: 148. doi:10.1093/icon/2.1.148.
17. "Centre, states to share RTE expenses in 68:32 ratio – The Economic Times". Economicstimes.indiatimes.com. 30 July 2010.
18. PTI (13 February 2010). "Right To Education Act to be implemented from April". The Times of India. New Delhi.
19. "Centre to pick up 70% of education law tab". Hindustan Times. 30 July 2010. "Shri Kapil Sibal Addresses 58th Meeting of CABE; Proposes Extension of RTE up to Secondary Level Moots Bill to Control Malpractices in School Education". PIB. 7 June 2010.
20. "NAC recommends pre-primary sections in govt schools". Economic Times. 3 August 2010.
21. Akshaya Mukul, TNN, 26 Jun 2010, 04.08am IST (26 June 2010). "HRD panel to oversee RTE rollout – India – The Times of India". The Times of India. "RTE Act: First anniversary status report". Educationworldonline. 7 May 2010.
22. "SC seeks action plan on execution of RTE in NE". igovernment. 25 August 2010.
23. "SC opens door for equal pay to teachers in pvt, govt schools". Tribune. 12 August 2010.
24. RTE Implementation <http://iharnews.com/index.php/education/295-beeo-right-to-education-act-haryana>
25. http://www.indg.in/primary-education/policiesandschemes/rte_ssa_final_report.pdf
26. "FTN: Privatisation no cure for India's education ills – India News – IBNLive". Ibtnlive.in.com. 3 February 2010.
27. George, Sony (November 2001). "Common Demands on Education". India Together..
28. Infochange India. "India to notify right to education act". Southasia.oneworld.net.
29. Aarti Dhar (28 July 2010). "News / National : U.K. doesn't intend to probe Sarva Shiksha Abhiyan for corruption". The Hindu.
30. Surbhi Bhatia, 26 Jul 2010, 05.54am IST (26 July 2010). "Quality in education: It's my legal right – Education – Home – The Times of India". The Times of In