

## Right to Education Act—2009

A number of efforts have been initiated recently to make elementary education a fundamental right for children of India. The Constitution (Eighty-sixth Amendment) Act, 2002 inserted Article 21-A in the constitution of India to provide free and compulsory education to all children the age group of six to fourteen as a fundamental Right. The Right of Children to free and compulsory Education (RTE) Act, 2009, Which represents the consequential legislation envisaged under Article 21-A, means that every child has a right to full time elementary education satisfactory and equitable quality in a formal school which satisfies certain essential norms and standards.

Article 21-A and the Right to Education Act came into effect on 1 April 2010. This was a historic day for the people of India as from this day the right to education will be accorded the same legal status as the right to life as provided by Article 21-A of the Indian Constitution. Every child in the age group of 6-14 years appropriate classroom in the vicinity of his place of residence. The title of the RTE Act incorporates the words 'free and compulsory'. 'Free education' means that no child, other than a child who has been admitted by his or her parents to a school which is not supported by the appropriate Government, shall be liable to pay any kind of free or charges or expenses which may prevent him or her from pursuing and completing elementary education.

### HISTORY OF RIGHT TO EDUCATION ACT

The Right to Education legislation has a long and chequered history, having been subjected to numerous round heated debate and philosophical alteration. In 1950, India made a constitutional commitment to provide free and compulsory education to all children up to the age of 14, by adding this provision in article 45 of the Directive principles of State Policy.

RTE act as was brought into existence in the period following the passage of the 86th constitutional amendment in 2002, which declared Education a fundamental right of all children in the age-group of 6-14.

Followed by the 86th constitutional amendment, Participatory process of inviting comments from member of the public yielded several different drafts of right to education bill in the subsequent years until finally, in 2008, the Union Cabinet stamped its seal of approval on it and it was placed before the Rajya sabha which passed it in July 2009. The bill then proceeded to the Lok Sabha, where it was passed in August 2009.



The right to education was discussed extensively during the drafting of the constitution. The constituent subcommittee of fundamental Rights included the right to primary education as a fundamental right. However the Advisory committee of the constituent assembly rejected the proposal and placed in the category of non-justifiable fundamental rights (later known as Directive principles of state Policy). The first official recommendation for the inclusion of a fundamental right to education was made in 1990 by the Acharya Ramamurti committee. Thereafter, several political as well as policy level changes influenced the course of free and compulsory education. The country witnessed an increased international focus on its initiative regarding free and compulsory education after its participation in the World conference on Education for All in 1990. India also ratified the United Nations Convention on Right of the child in 1992.

In 2002, the 86th amendment to the constitution introduced Article 21-A making the right to The 86th Constitutional Amendment. With the 86th constitutional amendment, for the first time since the framing of constitution, was a fundamental right added to the constitution of India. Befittingly, for India, with the largest number of illiterates in the world, the first addition to the fundamental right list relates to education. Subsequent to the amendment, the following article shall be inserted to the article 21 of the constitution namely:

*Article 21A:* 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.

*Article 45* will not as was being considered earlier be deleted instead the content of article 45 of the constitution is being substituted by "*The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years*". The pre amended content of article 45 was "*The state shall endeavour to provide within a period of ten years from the commencement of their constitution for free and compulsory education to all children until they complete the age of fourteen*".

In article 51-A of the constitution, after clause [J], the following clause shall be added, "*Who is a parent or guardian to provide opportunities for education to his child or, as the case maybe, ward between the age of six and fourteen years.*"

Unlike other fundamental rights the right to education required an enabling legislation to effective. The RTE Act is this enabling legislation. The RTE Act came into force on April 1, 2010.

#### RIGHT TO EDUCATION (RTE) ACT—2009

The original Article 45 in the Directive Principles of State Policy in the Indian Constitution had mandated the State to endeavour to provide free and compulsory education to all children until they complete the age of fourteen years within a period of ten years from the commencement of the Constitution. The national resolve to achieve universal elementary education gained further momentum with the adoption of the Constitution (Eighty-sixth Amendment) Act, 2002 which inserted Article 21-A in the Constitution of



India to provide free and compulsory education for all children in the age group of six to fourteen years as a Fundamental Right in such a manner as the State may, by law, determine. The Constitution (Eighty-sixth Amendment) Act, 2002 also enjoins the State "to provide early childhood care and education to all children until they complete the age of six years". Article 46 of the Indian Constitution enjoins that "the State shall promote, with special care, the education and economic interests of the weaker sections of the people, and, in particular of the Scheduled Castes and Scheduled Tribes, and shall protect them from social injustice and all forms of social exploitation". Similarly, Article 30[1] provides for the rights of Scheduled Tribes, and and administer educational institutions of their choice.

#### DEFINITION OF RTE ACT—2009

The Right of Children to Free and Compulsory Education (RTE) Act, 2009 was amended in 2012 and the RTE Amendment Act came into force with effect from 1 August 2012. The Amendment Act inter alia provides for:

- (i) inclusion of children with disability as contained in the Persons with Disabilities Act 2005 and the National Trust Act under the purview of RTE Act and providing them free and compulsory education, and providing option for home-based education for children with severe disability;
- (ii) protection of the rights of minorities provided under Article 29 and 30 of the Constitution while implementing the RTE Act;
- (iii) exemption of Madrasas, Vedic Pathshalas and educational institutions imparting religious instruction from the provisions of the RTE Act.

The Right of Children to Free and Compulsory Education (RTE) Act, 2009, which represents the consequential legislation envisaged under Article 21-A in the constitution of India, came into force in the country on 1 April 2010. The RTE Act, 2009 provides for the following:

1. Entitles every child of the age of six to fourteen years with the right to free and compulsory education in a neighbourhood school till completion of elementary education; It clarifies that 'compulsory education' means obligation of the appropriate government to provide free elementary education and ensure compulsory admission, attendance and completion of elementary education by every child in the six to fourteen age group. 'Free' means that no child shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing elementary education;
2. Makes provisions for a non-admitted child to be admitted to an age-appropriate class;
3. Specifies the duties and responsibilities of appropriate Governments, local authority and parents in providing free and compulsory education, and sharing of financial and other responsibilities between the Central and State Governments;
4. Lays down the norms and standards relating inter alia to Pupil Teacher Ratios (PTRs), building and infrastructure, school working days and teacher working hours;



5. Rational deployment of teachers by ensuring that the specified Pupil-Teacher Ratio is maintained for each school, rather than just as an average of the State or District or Block, thus ensuring that there is no urban-rural imbalances in teacher postings. It also provides for prohibition of deployment of teachers for non-educational work, other than decennial census, elections to local authority, state legislatures and parliament, and disaster relief;
6. Appointment of appropriately trained teachers i.e. teachers with the requisite entry level and academic qualifications;
7. Prohibits (a) physical punishment and mental harassment; (b) screening procedures for admission of children; (c) capitation fees; (d) private tuition by teachers; and (e) running of schools without recognition;
8. Requires the appropriate government and every local authority to "ensure that the child belonging to weaker sections and the child belonging to disadvantaged groups are not discriminated against and prevented from pursuing and completing elementary education on any grounds";
9. Development of curriculum in consonance with the values enshrined in the Constitution, and which would ensure the all-round development of the child, building on the child's knowledge, potentiality and talent and making the child free of fear, trauma and anxiety through a system of child-friendly and child-centred learning;
10. Protection and monitoring of the child's right to free and compulsory education and redressal of grievances by the National and State Commissions for Protection of Child Rights which shall have the powers of a civil court; and
11. A private unaided school, not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority, shall admit in Class I, to the extent of at least 25 per cent of the strength of that Class, children belonging to weaker sections and disadvantaged groups in the neighbourhood and provide free and compulsory education to them.

### MAIN FEATURES OF THE RTE ACT

The main features of the RTE Act, 2009 are given below:

#### Free Elementary Education for All Children in Age Group of 6-14 Years in a Neighbourhood School

*What does "free" mean?:* According to the Act, no financial constraints can "prevent" a child from enrolling, attending and completing elementary education. In other words, if a child lives in a remote area, providing free transportation (or a residential facility or some other facility) will be part of the child's entitlement to education; if a child is disabled and needs crutches to walk to school then crutches, or some other facility that enables him to go to school will be part of his entitlement under the Act.

*What is elementary education?:* Elementary education is 8 years of education corresponding to classes 1-8. This in most cases includes children



between 6-14 years, but in states that start at 5 years and go up to class 7, K12, would still extend to class 8.

**What is a neighbourhood school?:** The neighbourhood has been given a wide definition in the Model Rules of the Act. Ordinarily it is 1 km walking distance from the habitation of a child at the primary level and 3 km for upper primary level. However, in areas with sparse populations, or those prone to natural disasters or with difficult terrain or civil unrest, this limitation may be changed and transportation or residential facilities provided to children so that their education is not interrupted or disrupted.

### Compulsory Elementary Education

The word compulsory has implications for the government alone. In other words while it is the duty of the parent to send their children to school, it is the obligation of the government to ensure not just enrolment but attendance and completion of elementary education. This implies that the government:

1. Must identify all children that are out of school or dropped out
2. Make sure that they are enrolled in school
3. Make sure they attend school on a regular basis
4. Make sure they complete the elementary cycle of education.
5. If parents are reluctant to send their children it is the responsibility of the government to find a way of convincing the parents, without use of force/ violence/pressure to send their children to school.

### Age Appropriate Education

1. This means that children will be enrolled in the class that corresponds to their age. In other words, if a 10 year old has not been to school or dropped out earlier, she will be enrolled in class 5.
2. To enable the 10 year to cope in class 5 "special training" will be provided on the premises to bring the child up to the age appropriate level.

### Quality Norms for ALL Schools

The Act lays out some basic norms for all schools (government and private):

1. Pupil-Teacher Ratio (cannot exceed 1:30)
2. Minimum days of school functioning in a year (200 and 250 for primary and Upper Primary, respectively)
3. Minimum hours of instruction in school (4 and 5 hours a day for primary and UP)
4. Minimum working hours for the teacher (45 hours a week)
5. Separate subject teachers and head-teacher
6. One room for every teacher
7. Separate and functional toilets; clean and adequate drinking water
8. Playground, boundary wall, library, kitchen

### Qualifications for Teachers

1. Para Teachers banned
2. All teachers must subscribe to minimum qualifications and training



- norms laid out by Academic Authority within 5 years.
3. Teacher education and Teacher training institutes to be upgraded to enable fulfillment of quality and qualification norms for teachers.

#### Curriculum in Line with Constitution

1. This means that curriculum, syllabus and books must conform to Constitutional values. It implies that communal and harmful agendas cannot be part of the materials used and taught in ANY school of the country.
2. Syllabus and Books must also take into account age and learning levels of children

#### Evaluation System to be Based on Principle of Continuous and Comprehensive Evaluation (CCE)

1. No failure till completion of elementary cycle
2. Evaluation to be done throughout the year and not be based on an annual exam.
3. Teachers to maintain Pupil Cumulative Record (PCR) for every child.
4. Evaluation to be on "comprehensive" performance of child, reflecting all facets, talents of the child and not be based on just a few subject areas. The PCR to include music, theatre, leadership skills, social skills etc., as well.

#### Role of Panchayati Raj Institutions (PRIS)

1. The PRIs have been given a wide range of functions related to the implementation of the provisions of the RTE, such as identification of out of school children; neighbourhood-wise school mapping; maintenance of child records (child-tracking) public display of information; education of children from migrant families; participation in School Management Committees (SMCs)
2. PRIs have also been made responsible for grievance redressal in matters related to violations of the rights of the child under RTE.

#### Participation of Civil Society

1. School Management Committees (SMCs) consisting largely of parents (75%) and of PRIs officials and civil society partners have been given a wide range of functions under the Act, including the preparation of the School Development Plan
2. Teachers have been made accountable to the SMCs.

#### Reservation in Private Schools

1. All private schools are required to admit in their incoming class 25% children from weaker sections and socially disadvantaged groups from their neighbourhood.
2. Limits of definition to be extended if 25% seats are not being filled within the standard limits of neighbourhood.