



RIGHT TO EDUCATION

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ABSTRACT

“Right to Education Act (RTE)” is an Act enacted by the Indian parliament during the tenure of Manmohan Singh as Prime Minister of India on 4th of August in the year 2009 i.e., nothing but to provide free and compulsory education to children from the age of 6 to 14yrs in India under Article 21A of the Indian Constitution. The 86th amendment of the Indian constitution inserted Article 21A in 2002; which is free and compulsory education for all children from 6 to 14 years old. This article made education a fundamental right for every child in India. India became one of the 135 countries in the world to make education as a fundamental right of every child. Act came into force on 1 April in 2010. Enforcement of this policy is a joint responsibility of the state and the centre to provide free and compulsory education to children. Free and compulsory education means that, "All children from the age of 6 to 14years shall have the right to free and compulsory elementary education at a neighborhood school. Direct or indirect cost to be borne by the child or the parents to obtain elementary education doesn't exist in this policy even if child is studying under 25 percent quota in other school. The government will provide schooling at free of cost until child's elementary education is completed. State governments were forced to implement the same in all the public aided and unaided schools without fail. Many

people are still not fully aware of this Act and its provisions. Key features of this Act are that it makes education as a fundamental right of every child from the age of 6 to 14. Under this policy all private schools should reserve 25% of seats of total seats to children who belongs to disadvantaged groups and weaker section in the society and provide free and compulsory education till its completion. The Ministry of HRD set up a high level, 14-member National Advisory Council for implementation of this Act. The Right to Education for persons with disabilities until 18 years of age is applicable under a separate legislation i.e., the Persons with Disabilities Act. The passing of this RTE Act in 2009 marked as a historical moment for the children in India. This Act serves as a building block to ensure that every child has his or her right to get a quality elementary education, and that the State, with the help of families and communities, fulfils this obligation. Few countries in the world already have such national provision to ensure both free and child centred, child-friendly education.

The RTE ACT also forbids some of the issues like:

- Mental harassment over any student or physical assault by working or non-working staff.
- Illegal collection of fee which should not be collected.
- Prohibits the working of the school without recognition of Govt.

STATEMENT OF PROBLEM

Issues Relating to RTE Implementation and Challenges,



This study highlights the problems faced by people even after introduction of RTE policy and how RTE policy is misused by public .It tries to understand the benefits and challenges of the policy.

RESEARCH OBJECTIVE

1. To report the views of stakeholders/public on this RTE's reservation policy.
2. To understand key challenges, benefits and the feasibility of this 25% reservation in private schools .
3. To understand the various methods and approaches for the implementation of this provision.
4. To verify the awareness levels among teachers, parents and school management is enough/not.
5. To know how RTE policy is misused by people
6. To know loopholes of this policy

AIM OF THE STUDY

TO BECOME AWARE AND TO KNOW THE MERITS AND DEMERITS OF RTE POLICY.

RESEARCH QUESTIONS

1. BENEFITS OF RTE POLICY?
2. DRAWBACKS OF RTE POLICY?
3. HOW RTE POLICY IS MISUSED BY PUBLIC?

4.HAS THE ENROLMENT OF STUDENTS IN SCHOOLS INCREASED AFTER THE ACT?

5. WHILE ENROLMENT IS HIGH, THERE ARE STILL MANY WHO DROP-OUT. WHY HAS THE RTE FAILED TO BRING DOWN DROP – OUT RATE?

INTRODUCTION

The universalization of elementary education is an objective of the Indian government since independence i.e., from 1947 but not yet achieved so in order to achieve RTE policy was introduced and it became a fundamental right and an Act . RIGHT TO EDUCATION ACT,2009 is nothing but to provide free and compulsory education to children from the age of 6years to 14years by the state governments and central government in India.This act was enacted on 4th of August in 2009 i.e., during the tenure of Manmohan Singh who was then Prime Minister of India .Later right to education became a fundamental right. India became one of the 135 countries to make education as fundamental right.. Act came into force on 1 April in 2010.This policy was introduced for the encouragement of people, who belonging to disadvantaged groups in society, poor etc.. to send their children to study without paying even a rupee. Many people in India are still not aware of this policy so even after introducing this policy we are finding child labour. Under this policy all private schools should reserve 25percent of seats out of total number of seats for children who belong to disadvantaged groups and weaker section in the society and provide free and compulsory education till its completion. The Ministry



of HRD set up a high level, 14-member National Advisory Council for implementation of this Act¹. The Right to Education for persons with disabilities until 18 years of age is applicable under a separate legislation i.e., the Persons with Disabilities Act. Under this policy parents doesn't even incur indirect expenses like payment for uniform, books etc... This policy benefitted many, still many of them are benefitting and will benefit in future by this policy. Income line for which parents can enroll their children under the 25percent reservation is 3,60,000 rupees. There is a scope for doing malpractice and many of them done by producing false income statements for benefitting under this 25percent reservations in schools. People got low income certificates by paying a bribe and get free education for their children even though they can afford it and some try through intermediaries to get seat under 25% reservation in prestigious institutions. This way people who actually need the seat lose out on the opportunity. Under this policy fees of children who are studying in private schools will be reimbursed by government so private schools may show the high expenditure statements per child. There are even many disadvantages because of this policy to children, one of them is language barrier; which is faced by children joined in English medium schools from Govt schools. Under this policy teacher teaching in Government schools should be passed/qualified TET[Teacher Eligibility Test] conducted by respective states. The RTE ACT has provisions under this policy some of them are like prohibiting mental harassment over

any student or physical assault by working or non-working staff, states shall ensure that the 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 abandonment², Illegal collection of fee which should not be collected, Prohibits the working of the school without recognition of Govt, screening procedures for of children, capitation fee. There is also a provision for special training of school drop-outs to bring them upto par with students of same age. After one of the cases minority institutions are exempted from providing seats under 25% reservation to children from disadvantaged groups, weaker sections in the society. Under RTE Act schools should be managed by School Management Committees{SMCs} which should include local authority officials, parents, teachers and guardians. SMCs shall monitor utilization of government grants. RTE mandates 50% women, parents from disadvantaged groups in SMCs. Some of the main features of RTE Act,2009 are child should be awarded with certificate after completion of elementary education, 25% reservations for economically disadvantaged communities, financial burden will be shared between the state and the central government, Call need to be taken for a fixed student-teacher ratio. student teacher ratio for primary schools is 30:1 and for high schools it is 35:1 and other provision under this policy is there should be a primary school for every village within 1kilometre of the village for children of villagers. All the practioners of education

¹ Sections 33 and 34 of the Act

² Article 39 (e) and (f) of the Constitution of India.



appreciate intent of the Act and believe that it leads towards the universalisation of elementary education though in our the country .

REASON AND BACKGROUND FOR INTRODUCING RTE POLICY

Enforcement of compulsory education act took place in England in 1870.so,in India demand was rised regarding provision of compulsory elementary education, demand for laws to be made to make primary education compulsory was made by Dadabhai Naoroji and Jyotiba Phule but for only four years from Bombay Presidency. The demand for Universalization of Elementary Education was first put forward by Indians like Dadabhai Naroji before the Indian Education Commission (1882) to make the local bodies elected by the Indians responsible for elementary education. jyothis Rao Phule also informed his views that primary education should be made compulsory atleast till 12years.In Calcutta Congress in 1905 declared that it is birth right of the people of India to get proper education. This resolution opened new chapter in the history of the primary education in India.First attempt to introduce compulsory education in British India was made by Ibrahim Rahimtoola and Chamanlal setalwad in Bombay so Government of Bombay appointed committee in 1906 to examine the feasibility of introducing compulsory education in Bombay.Gopal Krishna Gokhale made efforts to make the Govt accept the principle of compulsory primary education in India.First vocal demand for introducing compulsory primary education was made by Gokhale.Since 1918 all the state legislatures started passing bills for introduction of

compulsory primary education in India.After Government of India Act, 1919 control of elementary education transferred to Indian ministers and after 1937 Indian ministers got powers to act independently. Gandhi formulated scheme for providing basic education ; which was discussed and endorsed at Wardha in 1937.This scheme later called as Wardha scheme; Under which 7 years of free and compulsory schooling is provided. National Policy on Education was framed in the year 1968 it is spoke about Indian government's commitment towards elementary education and National policy of education of 1986 and 1990 recommended to include Right to Education[RTE] as a fundamental right in the Indian constitution .In 1971 Government of India adopted National policy for children with an aim to provide free and compulsory education to children upto the age of 14. National policy on Education was formulated again in the year 1992 during the tenure of P.V.Narasimha Rao as Prime Minister and India signed the UN Convention on the Rights of the Child in 1992 and started the process of adopting legislation to make education a fundamental right of the child .Finally,Right to education made as a fundamental right in Indian constitution under Article21A in 2002 .

IMPLEMENTATION

The National Commission for Protection of Child Rights (NCPCR) and the state commissions monitor the implementation of the Act.86th amendment made by the Parliament in 2002 i.e., to provides free and compulsory education to children from 6years to 14years in all schools and made “Right To Education” as a fundamental right under Article21A by replacing article 45



.One of the provisions under this is 25% quota should be there for children belonging to disadvantaged groups ,poorer section in society etc..in all schools except in minority institutions and religious institutions.In 2003 free and compulsory education for children bill was prepared and posted in website and allowed public to comment and give suggestions.In 2004 taking suggestions into consideration first draft prepared in 2003 was revised.In 2005 Central Advisory Board of Education drafted the “Right to Education”Bill and submitted to the MHRD then it sent it to NAC[National Advisory Council] and then NAC sent it to PM for his observation .In 2006 finance committee and planning commission rejected it due to lack of funds.In 2009 Right to Free and Compulsory Education Bill,2008 passed in both Rajya sabha and Loksabha.Later received president’s assent in August 2009 . Financial burdens will be shared by the centre and the state governments in the ratio of 55:45 and the ratio for the northeastern states is 60:10³ .Finally Article21A and RTE Act came into effect on 1st April in 2010 except in Jammu and Kashmir . Various initiatives were launched by the central government for the universalisation of primary education in India before launching RTE like Five year plans, Mid Day Meal Scheme, Rashtriya Madhmayak Siksha Abhyan(RMSA) ,Sarva Siksha Abhyan (SSA)etc.

CURRENT STATUS OF THE RTE POLICY

Since 2010 there is an improvement in the enrolment rate of students in schools and improvement in social infrastructure

tookplace .People benefitting under 25percent quota increased in private schools because parents’ preference for private schools with the expectation of better quality education in private schools are increasingly becoming an important stakeholder in Indian Elementary education landscape. However, although some states have been successful in implementing 25 per cent criteria, there are some states that have failed .Pupil-Teacher ratio also improved since implementation .When the Right of Children to Free and Compulsory Education (RTE) Act, 2009 was passed by the Indian Parliament and came into force on 1st April, 2010 people of India hoped to see rapid change that the accessibility and quality of education for children in India would be improved quickly .The Act had set a deadline for implementation of its various provisions. Eight years have been passed since the Act came into force, and we can only find failure on behalf of our governments to implement the Act within the deadline as evident from the fact the Union Cabinet chaired by the Prime Minister has now approved the amendment to RTE Act, 2009 i.e., to extend the deadline, for training of all teachers to acquire minimum qualifications prescribed by the academic authority till 31st March, 2019. Earlier, the Proviso to Section 23(2) of the Act had specified that all teachers at elementary level, need to to meet eligibility criteria under RTE Act in order to continue in their jobs within a period of five years i.e.,from 31st March, 2015 . Many of them state that commencement of the Act, did not possess the minimum qualifications as laid down surveys shown that attendance as well as learning levels had declined since the introduction of Act weren’t enough, the report of the Comptroller and Auditor

³ Section 7 of RTE



General (CAG) on the implementation of the Act not only confirms this, but also revealed an open secret i.e. , the irregularities and corruption that the Act gives rise to. The report also confirms the Annual Status of Education *Report* findings and shows that the Act may not be getting all children into school, which is why it was legislated in the first place. The fact that the RTE Act has given rise to new sources of corruption that is in reimbursements etc.. Research conducted by NLSIU ,Bangalore in 2018 showed that awareness of primary stake holders about the Act is at 62.18%. The study clearly stated that the implementation of the Act was not up to the mark . Many officials working in the education department are also not satisfied with the implementation of the RTE Act in the state. As per United Nations Development Programme [UNDP], India has made significant progress in universalizing primary education. India is on the track to achieve goal of universalizing primary education, which was aimed by many forefathers. Enrolment and completion rates of girls in primary school are improving day by day and catching up with those of boys. This includes elementary completion rates. At the national level, male and female youth literacy rate is likely to be at 94.8 percent and 92.5 percent .

MERITS OF THE RTE POLICY

- It prohibits school from receiving any capitation fee from any of their students .
- The schools are forced to provide the seats allocated in the RTE scheme only to the candidates who are incapable to pay their fees.
- It also makes sure that pupil teacher ratio is maintained by every school and it ensures

that whether properly trained teachers are employed by the school for the proper education of the children .

- No discrimination and no harassment .
- It includes private schools .
- As 75percent of SMC[school management committee] members are from parents of children studying ,local authorities and 50 percent are women so they run school successfully .

DEMERITS OF THE RTE POLICY

- Children from Government schools may face language barrier in private English medium schools .
- As the fees is waived by the school under 25% quota for a specific section of people. In order maintain profits constant the school will tend to increase the fees of other students .
- Children who studied in private schools under 25percent quota may feel difficult to adjust in Government schools after 14years because their parents economical condition.
- The children from the poorer section may face the bullying/criticisms from the rich kids daily hurting their confidence .
- It doesn't consider children above 14years and below 6 years .
- Increase in corruption may take place by local authorities from unrecognized schools .

CASE LAWS

1 .Avinash Mehrotra v. Union of India & Others

Facts of the case : This case took place in Madras. The school, a single thatched roof building with no windows and exit was a private school and with only one entrance'. The fire started in a kitchen where cooks were preparing a midday meal, and killed 93 children and injured many of them . An



instant writ petition was filed under Public Interest Litigation[PIL] in order to protect school children against similar future tragedies and to improve the conditions of the schools in the country. The Supreme Court issued notices to the Union of India, State Governments and the Union Territories .

Judgement : Supreme Court Of India in its verdict mentioned that Right to Education also includes right to the provision of a safe environment in schools and imposed an obligation on schools in all the states to comply with certain fire safety precautions .

2. Mohini Jain Vs State of Karnataka:

Facts of the case : Miss Mohini Jain, a resident in Uttar Pradesh, applied to enrol at Sri Siddhartha Medical College, a private medical college in Karnataka in MBBS course. The college requested to deposit amount of 60,000 as tuition fees for the first year and a bank guarantee to cover the fees for the remaining years. Mohini Jain and her family didnot have the capability to pay the requested sum, and the private medical college denied her admission to her. She felt that descrimination took place and felt that fee is high. Mohini Jain then filed a petition with the Supreme Court of India against the Karnataka government, challenging the notification permitting the private medical college to charge a higher tuition fee to students not admitted to government seats than those admitted to government seats. The Karnataka Medical Colleges Association , Sri Siddhartha Medical College were also added as respondents.

Judgement : “Turning to the issue of the fees, the Court struck down the payment of capitation fees and stated amount paid as

capitation fee shouldnot be as a condition for entry into any educational institution, whether it may be public institution or private institution . According to the decision, access to education must be realised for all people without discriminating based of economic status . If any State decides to discharge its obligations under the Constitution through private institutions, these institutions must abide by the same constitutional requirements as the State. In most of the institutions in India capitation fees make access to education based on income rather than merit, they were deemed to be contrary to the right to education, and arbitrary and in violation of the right to equal protection of the laws under Article 14 of the Indian Constitution”.

3. M C Mehta Vs State of Tamil Nadu and others :

Facts of the case : Petitioner found child labour in Kamaraj district in Tamil Nadu working in the Match factories of Sivakasi, which is famous for cracker industries in India and he concerned about them so he filed a writ petition under Article 32 of the Indian constitution . The Respondent Government did not deny the existence of child labour, but instead offered suggestions to ameliorate the problem . There were 2941 children working in factories. The Supreme Court issued an order in 1990 calling for a ban on child labour in the manufacturing process of matchsticks and fireworks. However, subsequent to this order, an accident occurred in the Sivakasi Match Factories in which 39 people died. After this was published, the Court matter and make suggestions, such as payment of compensation.



Judgement : The Supreme Court has considered the constitutional perspectives for the abolition of the child labour in the Sivakasi Match industries. The Court has issued detailed directions to eradicate the children labour, who are below the age of 14 years in this hazardous industry . The Court has insisted that the employers must comply with the provisions of the Child Labour (Prohibition and Regulation) Act. The Court has emphasized that abolition of child labour is definitely a matter of great public concern and significance .

4. T.M.A.Pai Foundation v. State of Karnataka ⁴:

This case is about establishment of minority institutions .

Judgement : The court in its verdict stated that the state cannot interfere if reasonable fee was being charged by institution and if the admission was on basis of merit. However, minority educational institutions which are receiving aid from the state have to admit a reasonable number of students belong to nonminority groups and stated that state can fix quota for admissions to these educational institutions but it cannot fix fee charged and also admission can be done on the basis of common admission test and on the basis of merit.

5. Society for Unaided Private Schools of Rajasthan v Union of India & Another :

Judgement : The Supreme Court of India in its verdict stated that constitutionality of section 12 of the Right of Children to Free and Compulsory Education Act [RTE], 2002 under which all the schools which are both state-funded and private, should accept 25%

intake of children from disadvantaged groups except charitable and schools established not for profit as example., and also Court in its verdict stated that the RTE Act could not require private, minority schools to satisfy a 25% quota, as this would constitute a violation of the right of minority groups under Indian constitution establish private schools under the Indian Constitution .

[SOURCE : <http://www.right-to-education.org/link/escr-net-case-law-database>]

RECOMMENDATIONS

- To include children even after 14 years till 18 years under RTE policy.
- Free education should be provided even after 8th class i.e., to be extended till completion of UG course.
- Salaries for teachers should be increased based on students performances in schools .
- Events and programmes should be organised in rural and urban areas in order to bring awareness about RTE policy in people.
- Scholarships should be provided to meritorious students till completion of 11th, 12th classes i.e., only for 5 percent/10 percent students and based on economic status .
- Government should set up Special schools for SC/STs, who are economically backward after enrolment of children if not Government may face losses if only few are attending.
- All the Government educational institutions should be brought together so that Government may not incur loss.

⁴ AIR 2003 SC 355



- Fifty percent of the expenses should be provided to the person who is interested in building up school and providing education to all the people in rural areas
- There is a need to setup the mechanism to monitor the effective implementation of the RTE Act by the Local Authority as specified under section 32 of the Act .
- Compulsory rule should be made regarding elementary education should be received in only Government schools and fees should be paid by all except children from poorer section.
- Infrastructure should be improved instead of spending funds on election campaigns or by decreasing percentage of allocation on other sectors .
- Government should recruit people who are suffering from educated employment in schools so that Government can reduce its burden of giving high salaries and employment opportunity will be available for many .
- Section 3 of the Act concentrates only on academic streams but not on education related to complete physical, mental and psychological well being so these should be included in schools .

CONCLUSION

Introduction of RTE Act in 2009 became remarkable in the education system of India and benefitted many and benefitting many because of introducing this policy. However, the Constitution of India and Supreme Court have declared that the education is now a fundamental right of the children of India but it is upto 14 years from 6 years of age, it does not speak about children who are from 3 to 5 years and the Centre's much touted 'Sarva Shiksha Abhyan' Programme has failed to meet

its initial ideals because of many reasons, mainly "low teacher-to-pupil ratio in several States and "irregular monitoring of the facilities", according to former Vice-Chancellor of Bharatidasan University, Dr S Muthukumar in this way many of them criticized SSA so RTE was introduced in order to achieve the goal of Indian Government but it is not upto the mark because amendments should be made to this Act. It is needed that the Constitution should again be amended and the children of age group of 3 to 5 years of age should be included; as by the time the child reaches the age of 6 years most of the children belonging to poorer sections will be working into the child labour due to the poverty. Indian Constitution only ensures that the state shall provide primary education to the children up to the age of 14 years but not the higher education to the people. Parents have a prior right to choose the kind of education that shall be given to their children⁵. The right to education will be meaningful, only if education reaches to all the sections of the people in the society , if not it will fail to achieve the target that is to make Indian society an educated/literate society. There are many advantages and even disadvantages for this. RTE policy has been amended once that is to extend time period for teachers who are appointed till 2015 to meet eligibility criteria for teaching and second time it is amended to remove no-detention policy. After knowing about RTE i conducted survey to know awareness about RTE in people . After survey i came to know that nearly 70percent of people are not aware about RTE and even few of them they

⁵ Article 26 of Universal Declaration of Human Rights



don't know what is RTE .So,all the people of our nation should become aware of this scheme and should join their children in the Government schools if they couldnot meet expenses to send their children to private schools .If it is done then literacy rate in our nation increases and their children become skilled and earn well in future .For making RTE policy successful cooperation of people is needed .Poor People should be encouraged to send their children to Government schools by conducting awareness programs, campaigns about RTE . People should send their children to Government schools instead of sending their children to private schools by paying hefty sums of donations and capitation fees . If our present generation is educated then problems like unemployment and poverty will be eliminated in India .

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