

# **THE RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT OR RIGHT TO EDUCATION ACT (RTE)-2009**

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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 6 and 14 in India under Article 21a of the Indian Constitution. India became one of 135 countries to make education a fundamental right of every child when the Act came into force on 1 April 2010.

In 2005 the [Central Advisory Board of Education](#) drafted the Right to Education (RTE) Bill, and sent it to the [Ministry of Human Resource Development](#) (MHRD) for review. The MHRD in turn sent it to the National Advisory Council and the Prime Minister. The bill spent three years being scrutinized by the union government, government ministers and the public. In 2008 there was a new draft placed before and in September 2009 it was passed by the Union Cabinet, and hence became The [Right of Children to Free and Compulsory Education Act, 2009](#). The main purpose of the act is to outline the provision of quality education for all children between the ages of 6-14 as per the constitutional fundamental right awarded to children in the 86th amendment.

The Act makes education a fundamental right of every child between the ages of 6 and 14 and specifies minimum norms in elementary schools. It requires all private schools to reserve 25% of seats to children (to be reimbursed by the state as part of the public-private partnership plan). Kids are admitted in to private schools based on economic status or caste based reservations. It also prohibits all unrecognised schools from practice, and makes

provisions for no donation or capitation fees and no interview of the child or parent for admission. The Act also provides that no child shall be held back, expelled, or required to pass a board examination until the completion of elementary education. There is also a provision for special training of school drop-outs to bring them up to par with students of the same age.

The RTE Act requires surveys that will monitor all neighbourhoods, identify children requiring education, and set up facilities for providing it. The World Bank education specialist for India, Sam Carlson, has observed: "The RTE Act is the first legislation in the world that puts the responsibility of ensuring enrolment, attendance and completion on the Government. It is the parents' responsibility to send the children to schools in the US and other countries."

The Right to Education of persons with disabilities until 18 years of age is laid down under a separate legislation - the Persons with Disabilities Act. A number of other provisions regarding improvement of school infrastructure, teacher-student ratio and faculty are made in the Act.

Education in the Indian constitution is a concurrent issue and both centre and states can legislate on the issue. The Act lays down specific responsibilities for the centre, state and local bodies for its implementation. The states have been clamouring that they lack financial capacity to deliver education of appropriate standard in all the schools needed for universal education. Thus it was clear that the central government (which collects most of the revenue) will be required to subsidise the states.

A committee set up to study the funds requirement and funding initially estimated that INR 1710 billion or 1.71 trillion (US\$38.2 billion) across five years was required to implement the Act, and in April 2010 the central government agreed to sharing the funding for implementing the law in the ratio of 65 to 35 between the centre and the states, and a ratio of 90 to 10 for the north-eastern states. However, in mid 2010, this figure was upgraded to INR 2310 billion, and the centre agreed to raise its share to 68%. There is some confusion on this, with other media reports stating that the centre's share of the implementation expenses would now be 70%. At that rate, most states may not need to increase their education budgets substantially.

A critical development in 2011 has been the decision taken in principle to extend the right to education till Class X (age 16) and into the preschool age range. The CAGE committee is in the process of looking into the implications of making these changes.

The Ministry of HRD set up a high-level, 14-member National Advisory Council (NAC) for implementation of the Act. The members included Kiran Karnik, former president of NASSCOM; Krishna Kumar, former director of the NCERT; Mrinal Miri, former vice-chancellor of North-East Hill University; Yogendra Yadav – social scientist. India Sajit Krishnan Kutty, Secretary of The Educators Assisting Children's Hopes (TEACH) India; Annie Namala, an activist and head of Centre for Social Equity and Inclusion; and Aboobacker Ahmad, vice-president of Muslim Education Society, Kerala.

A report on the status of implementation of the Act was released by the Ministry of Human Resource Development on the one year anniversary of the Act. The report admits that 8.1 million children in the age group six-14 remain out of school and there's a shortage of

508,000 teachers country-wide. A shadow report by the RTE Forum representing the leading education networks in the country, however, challenging the findings pointing out that several key legal commitments are falling behind the schedule. The Supreme Court of India has also intervened to demand implementation of the Act in the Northeast. It has also provided the legal basis for ensuring pay parity between teachers in government and government aided schools. Haryana Government has assigned the duties and responsibilities to Block Elementary Education Officers–cum–Block Resource Coordinators (BEEOs-cum-BRCs) for effective implementation and continuous monitoring of implementation of Right to Education Act in the State.

It has been pointed out that the RTE act is not new. Universal adult franchise in the act was opposed since most of the population was illiterate. Article 45 in the Constitution of India was set up as an act: 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.

As that deadline was about to be passed many decades ago, the education minister at the time, MC Chagla, memorably said: "Our Constitution fathers did not intend that we just set up hovels, put students there, give untrained teachers, give them bad textbooks, no playgrounds, and say, we have complied with Article 45 and primary education is expanding... They meant that real education should be given to our children between the ages of 6 and 14" - (MC Chagla, 1964).

In the 1990s, the World Bank funded a number of measures to set up schools within easy reach of rural communities. This effort was consolidated in the Sarva Shiksha Abhiyan model

in the 1990s. RTE takes the process further, and makes the enrolment of children in schools a state prerogative.

**FOLLOWING FEATURES PROVIDE THE BASIS OF IMPLEMENTATION OF THE RTE ACT, 2009 :**

- Every child in the age group of 6-14 has the right to free and compulsory education in a neighbourhood school, till the completion of elementary education
- Private schools will have to take 25% of their class strength from the weaker section and the disadvantaged group of the society through a random selection process. Government will fund education of these children.

*No seats in this quota can be left vacant. These children will be treated on par with all the other children in the school and subsidized by the State at the rate of average per learner costs in the government schools (unless the per learner costs in the private school are lower).*

*All schools will have to prescribe to norms and standards laid out in the Act and no school that does not fulfil these standards within 3 years will be allowed to function. All private schools will have to apply for recognition, failing which they will be penalized to the tune of Rs 1 lakh and if they still continue to function will be liable to pay Rs 10,000 per day as fine. Norms and standards of teacher qualification and training are also being laid down by an Academic Authority. Teachers in all schools will have to subscribe to these norms within 5 years.*

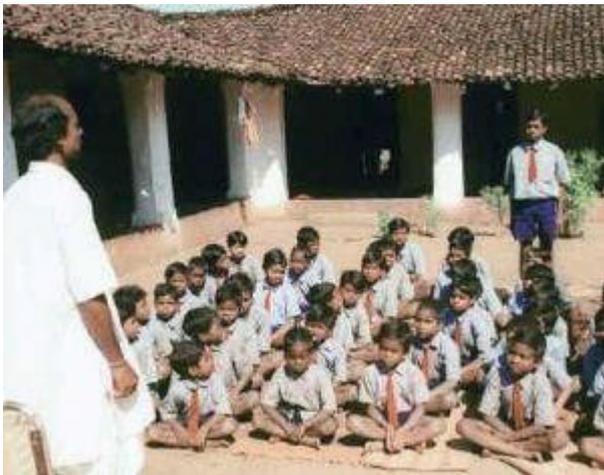
- No donation and capitation fee is allowed.
- No admission test or interview either for child or parents.

- No child can be held back, expelled and required to pass the board examination till the completion of elementary education.
- There is provision for establishment of commissions to supervise the implementation of the act.
- A fixed student and teacher ratio is to be maintained.
- All schools have to adhere to rules and regulations laid down in this act, failing which the school will not be allowed to function. Three years moratorium period has been provided to school to implement all that is required of them.
- Norms for teachers training and qualifications are also clearly mentioned in the act.
- All schools except private unaided schools are to be managed by School management Committees with 75% of parents and guardians as members.

### **CHILDREN BENEFITED :**

Approx 22 crore children fall under the age group 6-14. Out of which 4.1% i.e. 92 lakhs children either dropped out from school or never attend any educational institution. These children will get elementary education. Local and state government will ensure it.

### **MONITORING :**



The National Commission for Protection of Child Rights (NCPCR) has been mandated to monitor the implementation of this historic

Right. A special Division within NCPCR will undertake this huge and important task in the coming months and years. A special toll free helpline to register complaints will be set up by NCPCR for this purpose. NCPCR welcomes the formal notification of this Act and looks forward to playing an active role in ensuring its successful implementation.

NCPCR also invites all civil society groups, students, teachers, administrators, artists, writers, government personnel, legislators, members of the judiciary and all other stakeholders to join hands and work together to build a movement to ensure that every child of this country is in school and enabled to get at least 8 years of quality education.

### **BRIEF SUMMARY OF RTE Act-2009:**

In the first chapter the act states that the act once passed by the central government would be applicable to the entirety of India *except* Jammu and Kashmir. Chapter one also defines a number of key terms used in the act. Two terms of utmost important are 1. Appropriate government: is the central, state or union territory government which is directly in charge of a particular school or area; 2. Local Authority: is a Municipal Corporation or Municipal Council or Zila Parishad or Nagar Panchayat or Panchayat. The act has seven chapters that outline the various powers, roles and responsibilities of the central, state, district and local authorities, as well as teachers and school administrators.

Chapter two is the provisions of the act that calls for free and compulsory education for all children between the ages of 6 and 14. It provides for equal opportunities of disabled children. It makes special provisions for children who are not admitted and are above age 6 to be admitted into their age appropriate class, after special training and provides that they be allowed to complete their elementary education even pass the age of 14. Any child also has the right to transfer to a school that provides education up to class VIII if it is not provided in the school she is currently enrolled in.

Chapter three begins with a provision that the central and state governments are responsible for establishing schools where one is not available, in every area or neighbourhood. It outlines that the central and state governments share the responsibility both financial and other (such as development of curriculum, training of teachers, etc) required under this act. The appropriate government is responsible for providing free and compulsory education to all children, except those who would choose to enrol in private/ unaided schools. It must ensure no discrimination against children from educationally and socially backward groups, availability of a neighbourhood school, provide necessary infrastructure, provide good quality education, ensure completion of elementary school, and provide curriculum and teachers training. The local authority shares the above responsibilities as well as in charge of the academic calendar, education of children of migrant families, functioning of the school and maintaining a record of all children up to fourteen years of age in its jurisdiction.

Lastly it is the responsibility of parents to send their children to school and the appropriate government (which is directly in charge of a school or area) to provide pre- primary (between ages 3-6) education and child care.

In chapter four of the act there is an outline of school and teacher responsibilities. A government school is required to provide free education to any child that seeks admission. Aided schools, private schools and special schools are required to provide free education to a minimum of 25% of its students especially those from disadvantaged sections of society. In return the government is responsible to reimburse private schools the cost per child that a public school incurs to help aid the free education provided by such schools. But if the private school has received any sort of concession or subsidy they are not entitled to such reimbursement.

Schools are not allowed to charge capitation fees, screen the children for admission and even though they are allowed to ask for proof of age they may not deny admission on the basis of lack of proof. No school may hold back or expel a child before their completion of elementary education. There is a prohibition against physical punishment and mental harassment, which if broken is liable to disciplinary action. All schools must be registered or given a certificate of recognition by the appropriate government in order to function. This certificate will only be given or maintained if certain norms and standards are upheld. The government can levy charges up to one lakh against schools for continuing to function without a certificate. At this point it is conveniently added that the central government has the power to change these said "norms and standards" (given in the schedule at the end of the act) at any point.

The act calls for the establishment of a School Management Committee (SMC), which consists of local authorities, parents or guardians of children admitted in such school and teachers. The SMC is responsible for monitoring the school and making a school development plan. The school development plan is basically an outline for plans and grants that the appropriate authority should make.

The second section of Chapter four provides guidelines for teachers. Qualifications required by teachers can be set by the authorized academic authority such as a school headmaster. But the central government can override these minimum qualifications for a period of five years to allow for teachers to gain the appropriate qualifications. This section does not specify the salary and allowances granted to teachers. Teachers are responsible for regular attendance, finishing curriculum, supplementing learning in the classroom, and meeting with parents/guardians of the child on a regular basis.

There are three interesting clauses in this section. Teacher vacancies shall not exceed 10% of the total strength of teachers in a specific school. The number of teachers required is described in the schedule. Public school teachers may not engage in private tuitions for private gain but must participate in "decennial population census, disaster relief duties or duties relating to elections to the local authority or the State Legislatures or Parliament" (section 27-28 of this act).

Chapter five does not outline the specifics of curriculum and evaluation procedure but simply says it is the role of the authorized (by the appropriate government) academic authority. The authorized academic authority is required to look after the development of the child, the values of the constitution, the mother tongue of the child, the mental and physical well being of the child, allowing for anxiety and fear free expression of each child and evaluating and understanding each child's knowledge and ability. Under this section, no child will be subject to a board examination but will receive a certification on completion of elementary education.

In chapter six this act holds the National and State Commissions for the Protection of Child Rights responsible for upholding the right to education specified in the act and other rights under section 4 of the Commissions for Protection of Child Rights Act, 2006. They are responsible for addressing grievances that have come beyond the local authority. This section also provides for the establishment of the National Advisory Council, whose members are responsible for upholding this act.

Chapter seven there is a detailed description of the powers of the various levels to issue directions to the authorities below them for example from central to state government. It also establishes that there is no prosecution taken without sanction of an authorized officer for violating the school certification requirements and the capitation fee ban. This section adds the disclaimer that the government and all other bodies acting on its behalf are free from

prosecution if their actions are in 'good faith'. The appropriate government is also given powers to make rules on a variety of areas such as the special training for children currently not enrolled, the area or neighbourhood limits, the duties of teachers, the allowances and terms and conditions of members of the National Advisory Board. All rules must be laid before and passed by both house of parliament (in the case of the central government) and state legislatures (in case of the state government).

At the end of the act there is a schedule that outlines the number of teachers, building facilities, hours of the teachers, library and additional equipment required in each school.

### **DUTIES OF TEACHERS AND REDRESSAL OF GRIEVANCES :**

(1) A teacher appointed under sub-section (1) of section 23 shall perform the following duties, namely:

- (a) maintain regularity and punctuality in attending school;
- (b) conduct and complete the curriculum in accordance with the provisions of sub-section (2) of section 29;
- (c) complete entire curriculum within the specified time;
- (d) assess the learning quality of each child and accordingly supplement additional instructions, if any, as required;
- (e) hold regular meetings with parents and guardians and apprise them about the regularity in attendance, ability to learn, progress made in learning and any other relevant information about the child; and
- (f) perform such other duties as may be prescribed.

(2) A teacher committing default in performance of duties specified in sub-section (1), shall be liable to disciplinary action under the service rules applicable to him or her:

Provided that before taking such disciplinary action, reasonable opportunity of being heard shall be afforded to such teacher.

(3) The grievances, if any, of the teacher shall be redressed in such manner as may be prescribed

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