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**RIGHT TO EDUCATION: CONTEMPORARY ISSUES AND
CHALLENGES**

ABSTRACT

With the ever-broadening definition of right to life and personal liberty, the Right To Education (RTE) has become a critical issue in modern times. Lawmakers have debated on education policies for the better part of the past few decades and finally came up with the Right of Children to Free and Compulsory Education Act in 2009, which provided free and compulsory education to children belonging to the age group 6-14. Nevertheless, the implementation of the act has not proven to be effective. Various challenges and issues have come up with respect to compliance and administration of the policies provided in the act. Such issues and shortcomings have been detailed in this research paper along with potential solutions and suggestions.

KEYWORDS

Education, Right to Education, Constitutional Right, Article 21, Elementary Education

INTRODUCTION

Education forms an integral, and more importantly, an inalienable, part of an individual's life and his functioning in a society. This was the basic idea behind the vision of the lawmakers of India to establish a Right to Education. This idea was first borrowed from the Indian constitution; where Right to Education was expressly mentioned in the Directive Principles of State Policy. Eventually in 2002, with the help of effective judicial activism, RTE (Right to Education) was legislated upon and was proclaimed to be an essential part of dignified life under Article 21A of the constitution. Further statutory action was taken upon the matter when the Right To Education Act, 2009 was enacted by the parliament. The act has been effective in certain areas to promote elementary education. However, not all that has been envisaged by the act has been achieved in the real, practical world. Certain problems and challenges have been recognized over the years in the implementation and administration of compulsory elementary education.

THE RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT, 2009

To make the constitutional right in Article 21A enforceable and also to give it a legislative assent, the RTE Act of 2009 was passed by the Parliament. The provisions of the statute laid out the duties of the Government to ensure an environment that promotes free and compulsory education for children aged 6 to 14. It also established the procedures and the measures to be taken to ensure that the fundamental right is exercised by all the children in whom the right vests. It essentially created a roadmap for the Governments, both Central and State, to make free and compulsory elementary education a reality.

Some salient features of the Act include (but are not limited to) :

- Free and compulsory education for children aged 6-14. ¹
- Prescribed norms and standards that are required to be followed by recognised schools.²

¹ Right of Children to Free and Compulsory Education Act, 2009, §3, No. 35, Acts of Parliament, 2009 (India)

² Right of Children to Free and Compulsory Education Act, 2009, §19, No. 35, Acts of Parliament, 2009 (India)

- Prohibition of any capitation fee or screening process to seek school admission.³
- No child shall be denied admission in any recognised school.⁴
- There shall be no holding back or expulsion of any child till the completion of elementary education.⁵
- Prohibition of physical and mental harassment to children in the school environment.⁶
- Formation of a School Management Committee (SMC), which shall include parents and guardians of the students as members, making up for at least three-fourths of the committee, with the function of monitoring the workings of the school. SMC shall also include a minimum of fifty percent female members.⁷
- Fixes a 25% reservation for students belonging to Economically Weaker Sections of the society in private unaided schools.⁸

THE ISSUES AND CHALLENGES TO RTE IN INDIA

Ever since the act has been in effect, various patterns of non-compliance, loophole exploitation, and disobedience of law have been observed. The idea of making elementary education free and compulsory is facing multiple roadblocks and issues mainly pertaining to the administration and real-world practical implementation of the act. Some of the more prominent challenges are as follows:

a) Lack Of Qualified and Trained Teachers In The Elementary School System

A principle problem in the implementation of RTE, is the fact that there is no effective control over the quality of education and information imparted by teachers. Teachers are vital to achieve the goal of right to education for all as they are the ones who are directly engaged in providing knowledge to the students. Therefore, the availability of

³ Right of Children to Free and Compulsory Education Act, 2009, §13, No. 35, Acts of Parliament, 2009 (India)

⁴ Right of Children to Free and Compulsory Education Act, 2009, §15, No. 35, Acts of Parliament, 2009 (India)

⁵ Right of Children to Free and Compulsory Education Act, 2009, §16, No. 35, Acts of Parliament, 2009 (India)

⁶ Right of Children to Free and Compulsory Education Act, 2009, §17, No. 35, Acts of Parliament, 2009 (India)

⁷ Right of Children to Free and Compulsory Education Act, 2009, §21, No. 35, Acts of Parliament, 2009 (India)

⁸ Right of Children to Free and Compulsory Education Act, 2009, §12(1)(c), No. 35, Acts of Parliament, 2009 (India)

trained, professional and well-experienced teachers becomes crucial to solve the problem. These qualifications are provided for in section 23 of the RTE Act 2009. However, a shortage of such teachers exists in India. According to a report by National University for Education Planning and Administration (NUEPA), “More than 40 percent of all government elementary schools have only one or two teachers. This issue is particularly problematic in Madhya Pradesh and Jharkhand, both of which have well over 60 percent of their government elementary schools operating with only one or two teachers.”⁹ This shortage forces government schools to hire untrained teachers, the qualifications of whom are not in compliance with the statutory requirements. Moreover, there are no meaningful actions against a teacher who is unable to render quality teaching to students. For eg, An untrained teacher who is imparting factually incorrect information to the students that is not a part of the curriculum, shall face no direct repercussions (indirect repercussions may arise from a grievance redressal process laid down in Section 32 of RTE Act, which itself is quite tedious, lengthy and ineffective). This defeats the whole purpose of RTE and also takes away the incentive of schools to employ well-trained teachers who demand a higher pay.

b) Non Compliance Of Private Schools

There exists a recurring pattern of non-obedience of the RTE provisions by private schools. Close to 10,000 complaints were recorded by the NCPCR, which related to denial of school admissions to children, in the year 2019-20.¹⁰ Denial of school admission is a direct violation of the provisions of the RTE Act. Section 15 of the Act protects this right of children. In most cases, private schools are economically motivated to provide admissions to only those members of the society who are well-off and belong to a certain affluent segment of the society. Because of this reason, private schools may deny admissions to those needy children whose rights are sought to be protected by the statute. They often cite frivolous reasons like the residence of the student is too far away from the school, or that the school is not a right fit for the student,

⁹ Ramachandran, V., Beteille, T., Linden, T., Dey, S., Goyal, S. and Chatterjee, P., 2016. *Teachers in the Indian Education System How we manage the teacher work force in India*. NUEPA Research Reports Publications Series. [online] New Delhi: National University of Educational Planning and Administration (NUEPA), p.26. Available at: <http://www.niepa.ac.in/download/Research/Teachers_in_the_Indian_Education_System.pdf> [Accessed 9 February 2022].

¹⁰ Porecha, M., 2020. With more outreach, complaints of child rights violations up six-fold: NCPCR. [online] thehindubusinessline.com. Available at: <<https://www.thehindubusinessline.com/news/with-more-outreach-complaints-of-child-rights-violations-up-six-fold-ncpcr/article30516053.ece>> [Accessed 9 February 2022].

etc. Such denial of admissions discourages the needy and poor from applying yet again to other schools and incur the expenses for a second to start the admissions process over. This is a serious violation which often goes unreported and uncontested. In one particular case, a 6-year-old student belonging to the EWS category had applied for admission in a private school in Delhi when his admission was first accepted but later the school failed to honour such acceptance citing the reason that there were no more seats left under the 25% RTE reservation quota. The petitioner pleaded that the school was making excuses to avoid statutory duties and was trying to allot the EWS seat to someone else with a wealthy background for pecuniary gain.¹¹

These cases have become an everyday occurrence and achieving compliance of private schools is a mammoth challenge that persists with respect to RTE.

c) Exclusion of children belonging to age groups 0-6 years and 15-18 years

The Right to Education is only available to children who are between the ages of 6-14. This age bracket leaves out the children of 0-6 years of age which require crucial pre-primary education - which is critical to early cognitive and mental development of a child and makes him/her ready for further schooling. According to research, “The opportunity to help disadvantaged children attain an equal start in schooling is in the early years of life. The experiences of early years help young children to build their competence in all areas of development; the physical-motor, the social-emotional, the cognitive language and the moral-spiritual, including a positive attitude towards learning.”¹² It is evident that such an indispensable part of pre-primary education cannot be ignored. Pre-primary education is necessary for overall development and growth of a child since it builds a concrete base for further education, which enables him/her to lead a meaningful life while at the same time being a resource to the nation. However, such the right to pre-primary education is not available to children below the age of 6 under RTE, which is a huge drawback.

¹¹ JGLS Legal Aid Clinic Secures Favorable Interim Order For EWS Student Who Was Allegedly Wrongly Denied Admission To Modern School, Delhi [Read Order] Livelaw.in, <https://www.livelaw.in/news-updates/jgls-legal-aid-clinic-secures-favorable-interim-order-for-ews-student-who-was-allegedly-wrongly-denied-admission-to-modern-school-delhi-read-order-159573> (last visited Feb 9, 2022)

¹² Gouri Manik Manas, A STUDY ON CHILDHOOD DEVELOPMENT IN EARLY STAGE, 7 Scholarly Research Journal for Interdisciplinary Studies 13934 (2020)

In addition to the above, RTE is also not available for high school education either. Once a child attains the age of 14, the right to free education is no longer vested in him/her. Therefore, many students who are economically and socially handicapped, decide to drop out of school after 8th standard (which is usually the age when 14 years of age is attained) and that is where their education ends. According to a survey conducted by the National Statistical Office (NSO), close to 33% of students drop-out of schools after attending 8th standard and do not pursue high school education.¹³ This is a grave concern as high school education is just as important as elementary education if not more. In today's economic environment with cut-throat competition, high school education and some advanced knowledge is a must to make an asset out of oneself. Therefore, higher education becomes essential to lead a dignified life. This is where RTE lacks.

Moreover, India is a signatory to the United Nation Convention on the Rights of the Child, which has provided for the duty of every signatory state to ensure that free and compulsory education is available to children (defined by the convention as any person below the age of 18 or who has not attained majority as per the law to which he/she is subject) as a human right.¹⁴ This puts our country in direct violation of said convention.

d) Is education really free?

In the modern scenario, education does not only include tuition fees, but also various other overhead expenses which add up to a hefty sum of money. Under RTE, children have the right to attend government schools free of cost. However, in a practical sense, school fees only form a part of the cost of schooling. One of these overhead expenses is the cost of travel and commute to schools. It forms a major chunk of the schooling cost but still is often ignored. The costs become more pronounced in areas where the number of government schools is less and students have to travel long distances to get to school. According to the data available with the Ministry of Rural Development, more than 14% of Indian villages do not have schools. As a consequence, this would

¹³ National Statistical Office (NSO), Key Indicators of Household Social Consumption on Education in India (Ministry of Statistics and Programme Implementation) (2019), https://www.mospi.gov.in/documents/213904/301563//KI_Education_75th_Final1602590967945.pdf/4d0dc4c4-a8f0-0795-df06-be25f2b3a6f7 (last visited Feb 10, 2022)

¹⁴ OHCHR | Convention on the Rights of the Child Ohchr.org, <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx> (last visited Feb 10, 2022)

mean that children living in these villages have to travel to another place to exercise their constitutional right to education.¹⁵ The added costs of travel, stationary, books, etc often discourage the economically weaker population from sending their children to school. This remains to be a major issue with RTE.

The obstacles with respect to the cost of education are even more drastic in private schools. The 2009 Act paves way for EWS category students to avail education at private schools without paying any tuition fee, by virtue of a 25% reservation. However, it seems that studying at private schools is not preferred by parents of these EWS students. Various overhead fees and charges like computer charges, medical expenses, uniforms, excursion charges, lab fees, etc are levied at private schools along with the state sponsored tuition fees. These charges intimidate the parents and reserve them from sending their child to a private school for education. This defeats the primary purpose of the reservation, which is provided for by the act.

e) Absence of Penal Action

In the area of grievance redressal, there exist multiple shortcomings in the process. In case of any grievances, the National and State Commissions for Protection of Child Rights are called upon to inquire into complaints relating to the child's right to free and compulsory education.¹⁶ However, these bodies are only advisory in nature and are not in capacity to take any penal action against the school administrators or government bodies. The right to pursue a penal action mainly rests with the government or the School Management Committee (SMC), formed by virtue of section 21 of RTE Act, 2009. The SMC is a body consisting of parents of the students studying in a particular school. Despite that, the SMC may have difficulty in pursuing a legal action because more often than not SMC members are not willing to volunteer their time and effort and also lack a steady flow of funds to do so. Therefore, any RTE violation on part of school administrators may go undisputed and no penal action is taken.

¹⁵ Ruhi Tewari, More than 14 per cent villages in India don't have any school, shows Govt Data ThePrint.in (2018), <https://theprint.in/india/governance/over-14-per-cent-villages-in-india-dont-have-schools-says-latest-data/170440/> (last visited Feb 10, 2022).

¹⁶ Right of Children to Free and Compulsory Education Act, 2009, §31(1)(b), No. 35, Acts of Parliament, 2009 (India)

CONCLUSION AND SUGGESTIONS

The Right to Education in India suffers from numerous challenges and problems which require immediate attention of the lawmakers and the government. A deep and thorough inspection of the workings of schools and the implementation of the act is required. Many surface level problems can be dealt with by taking steps towards stricter compliance and penalisation of wrong-doers.

On part of the state, there exists a responsibility to ensure that no child is being deprived of his constitutional right to education. But on the contrary, it has been observed that the joint-authority of the state and central governments has led to lack of accountability. The statute prescribes no penalties if the governments fail to discharge their duties. A solution would be to form a clear 5-year plan which specifies the exact targets to be achieved by the state to ensure RTE. The targets can be in the form of improved teacher-to-pupil ratios, lesser dropout rates, increased number of schools, increased number of qualified teachers, etc. These plans should be formulated with coordination of both centre and state governments. Such outcome-oriented approach where results are measured and targets are defined will help in a better implementation of RTE. The government should apply a more output-centric approach rather than an input-based approach.

Focus should also be put on inter-state cooperation; For example, the State Government of Kerala, the state where literacy rates are highest, should work side by side with governments of other states to tackle issues related to elementary education.

Moreover, to solve the problems relating to teachers, specifically their unqualified nature and disciplinary conduct, a professional body of teachers should be set up. Lawyers are required to go through various stages of professional training and need to qualify as a member of the bar to successfully practice as a professional. Same goes with medical professionals, CAs, etc. Setting up a professional body of teachers would also prove to be beneficial in the RTE context. It would eliminate the problem of unqualified teachers in schools, ensure the quality of education imparted by the teaching staff, and set up disciplinary guidelines for card-holding teachers to follow. It would also allow taking action against a teacher in case of a violation, independent of the school administrators.