



## THE RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT

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### INTRODUCTION

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.

A rough draft of the bill was composed in year 2005. It received much opposition 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.

On 7 May 2014, The Supreme Court of India ruled that Right to Education Act is not applicable to Minority institutions.

The bill was approved by the cabinet on 2 July 2009. Rajya Sabha passed the bill on 20 July 2009 and the Lok Sabha on 4 August 2009. It received Presidential assent and was notified as law on 26 August 2009 as The Children's Right to Free and Compulsory Education Act. The law came into effect in the whole of India except the state of Jammu and Kashmir from 1 April 2010, the first time in the history of India a law was brought into force by a speech by the Prime Minister. In his speech, Manmohan Singh, Prime Minister of India stated that, "We are committed to ensuring that all children, irrespective of gender and social category, have access to education. An education that enables them to acquire the skills, knowledge, values and attitudes necessary to become responsible and active citizens of India." The RTE Act provides for the: Right of children to free and compulsory education till completion of elementary education in a neighbourhood school. 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 to 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. It makes provisions for a non-admitted child to be admitted to an age appropriate class. It 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. It lays down the norms and standards relating inter alia to Pupil Teacher Ratios (PTRs), buildings and infrastructure, school-working days, teacher-working hours. It provides for rational deployment of teachers by ensuring that the specified pupil teacher ratio



is maintained for each school, rather than just as an average for the State or District or Block, thus ensuring that there is no urban-rural imbalance 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. It provides for appointment of appropriately trained teachers, i.e. teachers with the requisite entry and academic qualifications. It prohibits (a) physical punishment and mental harassment; (b) screening procedures for admission of children; (c) capitation fee; (d) private tuition by teachers and (e) running of schools without recognition, It provides for 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.

### **HOW TO MAKE PROTECTION OF RIGHT TO EDUCATION**

A committee set up to study the funds requirement and funding initially estimated that Rs. 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 Rs. 2310 billion, and the center 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 CUBE committee is in the process of looking into the implications of making these changes.

#### **1) INDIAN CONSTITUTION**

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.

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## 2) PEOPLE'S PARTICIPATION

Peoples participation is an another important factor which is related to human being and its human rights. The success of each and every policy government is depend on peoples participation. In India common people elected their representatives with the help of adult franchise in modern time. Government has try to acquire support to the peoples. This changes in the role of people's participation can also be viewed from the perspective of generation gap, which has been followed from one generation to another.

## 3) RULE OF LAW

There is necessities to control human societies with the help of some rules and regulations. There is an importance of rules and regulations for the establishment of order. Sovereignty is the best regulation. Rules of law is concept which adopted many countries in modern era.

Every human being is consciously or unconsciously governed by philosophical and ideological stand points.

## II) ADVISORY COUNCIL ON IMPLIMENTATION

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:

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.

## III) Public-private partnership

To address these quality issues, the Act has provisions for compensating private schools for admission of children under the 25% quota which has been compared to school vouchers, whereby parents may "send" their children in any school, private or public. This measure, along with the increase in PPP (Public Private Partnership) has been viewed by some organisations such as the All-India Forum for Right to Education (AIF-RTE), as the state abdicating its "constitutional obligation towards providing elementary education".

## IV) Infringement on private schools

The *Society for Un-aided Private Schools*, Rajasthan (in *Writ Petition (Civil) No. 95 of 2010*) and as many as 31 others petitioned the Supreme Court of India claiming that the act violates the constitutional right of private managements to run their institutions without governmental interference. The parties claimed that providing 25 percent reservation for disadvantaged children in government and private unaided schools is "unconstitutional."

Forcing unaided schools to admit 25% disadvantaged students has also been criticized on the grounds that the government has partly transferred its constitutional obligation to provide free and compulsory elementary education to children on "non-state actors," like private schools, while collecting a 2% cess on the total tax payable for primary education.

On 12 April 2012, a three judge bench of the Supreme Court delivered its judgement by a majority of 2-1. Chief Justice SH Kapadia and Justice Swatanter Kumar held that providing such reservation is not unconstitutional, but stated that the Act will not be applicable to private minority schools and boarding schools. However, Justice KS Radhakrishnan dissented with the majority view and held that the Act cannot apply to both minority and non-minority private schools that do not receive aid from the government. In September 2012, the Supreme Court subsequently declined a review petition on the Act.

#### v) Barrier for orphans

The Act provides for admission of children without any certification. However, several states have continued pre-existing procedures insisting that children produce income and caste certificates, BPL cards and birth certificates. Orphan children are often unable to produce such documents, even though they are willing to do so. As a result, schools are not admitting them, as they require the documents as a condition to admission.

#### vi) Admissions

Though Govt says economically backward children are admitted in to private schools under RTE, but the fact is in the states like Andhra Pradesh, Children are admitted in to private schools based on caste based reservations.

### III) THE RESPOSIBILITY

There is a silicon revolution taking place in education and in the market. E-learning and E-governance are the major landmarks in this directions. The role of Right to Education is not only to fulfill corporate requirements but also he should be better equipped with silicon/techno- managerial skills .In this way above mentioned trends and processes the modern human being ought to posses the traits of a cultural values of society. Similarly to survive in market, he ought to be competent enough to show a direction to the market of Right to Education.

### CONCLUSION

For the protection of Right to Education need to ensure that there is genuine learning, human being have to think critically, creatively and practically. Therefore, need of the day is to make existing good protection of Right to Education.

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