
INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

**THE RIGHT OF CHILDREN TO FREE AND COMPULSORY
EDUCATION, ACT 2009**- Ujjwal Raj¹**ABSTRACT:**

Education is a tool that enables every individual to enlighten his/her life. Mahatma Gandhi once quoted that *"if we want to attain real peace in the world, then we all need to start educating each and every child"*.

When we consider the factors that contribute to the distinction of developed and developing countries, education stands as the sole most important element driving advancement in developed countries. It has been proven that an educated individual not only improves the economy but also improves the quality of life.

Educating the children can help in improving every facet of the country mainly because children are the future of the country. The right to education is also a fundamental right under Article 21 of the Constitution.

Considering the importance of education, the Indian Parliament made a special law of education which is widely known as the Right to Children to free and compulsory Education Act, 2009 (hereinafter referred as RTE).

This act was much needed mainly because in the past we did not have any specific legislation for promoting the education of the children. This piece of legislation has received immense attention from scholars working in different fields and has been recognized as an important act for promoting the growth of the child.

This policy analysis deals with critically analysing the provisions and objectives of RTE in detail and also presents some suggestions for better implementation of the act.

HISTORICAL EVOLUTION**INTERNATIONAL DECLARATIONS:**

The Constitution of UNESCO also firmly believes in providing opportunities to everyone in the society and encourages the state to make necessary laws that respect the same.²

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² UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANISATION

http://portal.unesco.org/en/ev.php-URL_ID=15244&URL_DO=DO_TOPIC&URL_SECTION=201.html (last

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As per Article 26 of the Declaration of Universal Human Rights, 1948, it has been mentioned that everyone has a right to free and fair compulsory education. Further, it also says that education must be geared towards the complete growth of the individual personality and should also aim at the reinforcement of human rights and essential values.³

As per Article 18 of the International Convention of Political and Civil rights, 1966, it the duty of each parent and guardian to provide the necessary education to their children for his/her betterment.⁴

The idea of free education is widely enhanced in the International Covenant on Economic, Social & Cultural rights of the year 1966. It has been mentioned in Article 10 of the convention that it is the duty of every parent to foster the education of his/her child. Article 13 of the convention also provides the idea of compulsory education in detail and mentions several objectives of providing education. Article 14 of the same conventions also promotes the same view⁵.

The International Convention of the Elimination of all forms of Discrimination against women of the year 1979 also promotes the idea of providing education to girl child for her secured future.⁶

The International Convention on the Child Rights in 1989 has immensely highlighted the idea of child education in detail and in a holistic manner. Articles 19, 23, 24, 28, 29, 32, 33, 40 of the same international convention talk about the right of a child to attain education.⁷

The above-mentioned ideas for promoting education for everyone were also discussed in the World Education Forum in the year 2019.⁸

HISTORY OF ANCIENT EDUCATION:

The origins of education can be linked back to ancient times when the *Gurukul system* was in place. Here teachers were widely known as *gurus*.

In this System, anyone interested in studying might go to the teacher's house and study various disciplines. The teachings were closely linked to nature, which was a unique aspect of

visited on June 13, 2021).

³ UNITED NATIONS, <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (last visited on June 13, 2021).

⁴ UNITED NATIONS HUMAN RIGHTS, <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> (last visited on June 13, 2021).

⁵ UNITED NATIONS HUMAN RIGHTS, <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx> (last visited on June 13, 2021).

⁶ UN WOMEN, <https://www.un.org/womenwatch/daw/cedaw/> (last visited on June 13, 2021).

⁷ UNITED NATION HUMAN RIGHTS, <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx> (last visited June 13, 2021).

⁸ GLOBAL PARTNERSHIP, <https://www.globalpartnership.org/events/education-world-forum-2019> (last visited June 13, 2021).

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life.

HISTORY OF RTE:

- **1968:**First National Commission for Education was established by the parliament, the main work of such a commission was to submit a detailed report on enhancing the curriculum.
- **1968:** the first National Policy on Education was formulated.
- **1976:**In this year, education was added to the concurrent list of the Indian Constitution.
- **2000:** A constitutional amendment was made for incorporating education for children below 14 years of age as a fundamental right under Article 21. Apart from this, a new duty was introduced in Article 51 of the Constitution with respect to education.
- **2003:** The first draft for the bill of right to education was prepared and was promulgated in public for analysing their recommendations on the same for the better implementation of the act.
- **2004:** Most of the people recommended the title of the bill to be Free and required Education Bill of 2004 and changes were made accordingly.
- **2005:** A special body for education was established, this body was *Central arranging the leading body of Education (CABE)*. The main function of this body was to draft a report on the right to education bill.
- **2006:** The ministry of Human Development did not consider the report of CABE valid and hence rejected the report.
- **2009:** After much debate, the RTE bill was introduced in the parliament in the year 2009 and eventually attained approval.
- **2010:** The RTE Act came into existence.

MAIN OBJECTIVES OF RTE

The objective of RTE has its basis on primarily 4As, as highlighted by the UN report.⁹ According to the 4A structure, political leaders must respect, uphold, and promote the Right to Education by ensuring education available, accessible, acceptable, and adaptive. Other interested parties in the educational system are given responsibilities as well, including the child, parents, and teachers. These 4as are as follows:

⁹ UN Commission on Human Rights, Progress report of the Special Rapporteur on the right to education, submitted in accordance with Commission on Human Rights resolution 1999/25, 1 February 2000, E/CN.4/2000/6, available at: <https://www.refworld.org/docid/3b00f4290.html> [accessed 13 June 2021]

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Availability: The state has to ensure that the schools must be available in adequate numbers. All institutions should have the necessary equipment for running the school. These include a safe building, washroom facility, teachers, uniform, etc.

Accessibility: Educational institutions must be open to all people without any discrimination on any ground and education must be fostered for the minorities as well without any prejudice. It also means that child labour and discrimination shouldn't be present, and positive steps should be taken to further promoting education. School should also be within the reach of students from their home and should not be far away.

Acceptability: Acceptability entails delivering quality education without discrimination and in a culturally appropriate manner. Teaching strategies should be impartial, and available resources should reflect a diverse range of ideas and opinions. Within schools, health and wellbeing should be prioritized, including the eradication of all types of physical violence. Faculty should retain their professionalism.

Adaptability: Serving the individual needs of children in a particular setting, meeting changing societal requirements, and responding to gender differences are all examples of adaptability. Schools should be adaptable and flexible in response to community changes and society's requirements.

The main objectives of RTE are the following:

- It aims to promote social justice by providing free and compulsory education for everyone.
- Apart from this, it also aims to make every child a part of the schooling for promoting his/her personal and professional growth.
- It also aims to strengthen the literacy rates of our country.
- It promotes education as a basic human right and also wishes to include the marginalized section of the society.
- It also wishes to address the gender gap by promoting various campaigns for the girl child for completing their education, these campaigns include *Beti Bachao, Beti Padhao*, etc.
- It also seeks to spread awareness regarding the importance of education in all spheres of life.
- It aims to uplift everyone by the means of education for enlightening the future of our nation.

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- It also aims to bridge the gap between the haves and the have not's by promoting free education for the have not's.

SUMMARY OF THE ACT

The RTE Act is a ground-breaking initiative in India that ensures that all children have access to free and compulsory education. The term "compulsory education" has been used in the Act to enforce responsibility on the government and local authorities, as specified in the Act, to ensure enrolment, participation, and accomplishment of primary education for all children between the age of 6 to 14.

The RTE is divided into 7 main chapters, these are:

- 1) Preliminary
- 2) The right to education which is free and mandatory
- 3) Respective responsibilities of the government and the parents
- 4) Duties of the school and teachers
- 5) Completion of elementary school and its curriculum
- 6) Protection of children's right
- 7) Miscellaneous

Some of the important sections and provisions of RTE are as follows:

As per Section 3 of the RTE, there is no duty on the child to pay his/her school fees, he/she is not liable to make good other expenses while pursuing his/her education. This right is also available to children with a specific disability. Apart from this, any child who has multiple disabilities has the legal right to switch to home-based education at his/her disposal.

As per section 4, if there is any child who could not complete his/her education due to any reasons, then he/she should be admitted to the class after considering the age of such a child and should receive special training after coming at par with other children in the class.

As per section 5, the child has the right to transfer to any government-funded school if the present institution doesn't offer the required resources. In such cases of transfer, the child has the right to ask for the Transfer Certificate. The principal of the school should not delay or deny issuing such a certificate.

As per section 6, it is the duty of the government or any other local competent to initiate the establishment of a school in the neighbourhood for better reach of the children. The government should also distribute funds for the same reason as per section 7.

As per section 10, it is the duty of every parent or any legal guardian to admit their child for

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schooling in the neighbourhood school.

As per section 13, no procedure should be following for choosing the appropriate child/parents of the child. The opportunity of education should be given to everyone. Apart from this, section 14 talks about maintaining proof of age of every child admitted to the school.

The section 17 further talks about the prohibition of harassment of any sort on the child on the school premises. As per section 18, no school should be created without seeking a legal certificate of recognition from any competent authority.

As per section 21, every government-funded school is required to make a committee for school management, and the members of such a committee should be the leaders of local competent authorities, apart from this, 75% of the member should be parents. The main function of such a committee is to monitor the functioning of the school along with the demands of the children. This committee is also accountable to draft the plan for the school's development as per the section 22.

Section 24 highlights the duties of the teachers. A teacher in the school is responsible for maintaining punctuality in the class. A teacher also has to complete the slybuss on time and is also responsible for regularly organizing parent's teacher meet.

As per section 29, the school authority should create the curriculum in a manner to foster the child's overall development and the medium of instruction should be carried out in the mother tongue of the child. As per section 30, a child should not be promoted to another class without clearing the term-end examination.

As per section 33, the central government should establish a National Advisory Council for advising the central government to promote education. The states are also responsible to make the State Advisory council as per section 34.

AMENDMENTS IN RTE

There have been amendments in RTE in the years 2012, 2017, and 2019. Let us analyse the same in detail:

NATURE OF PROVISION	RTE, 2009	AMENDMENTS
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Cultural and Educational Rights	No related section.	In section 1 it was added the right to free education will apply to everyone and the only exception cultural and educational rights of any community as per the amendments in the year 2012.
Provision for the child with a disability	No related section.	As per the amendment in 2012, a new clause was added in the section 2 for the rights of the child with a disability.
Compulsory education till 14 years of age	No related section.	The compulsory education till 14 years of age was added by the amendment of 14 years of age.
Power of central government to eliminate difficulties	No related section.	This section was added by the virtue of the amendment act in 2012.
Appointment of teachers without qualification	No related section.	It was added by the amendment act of 2017 that the teachers who don't have the required qualification will complete the same within 4 years of their appointment in school. This was added in section 23.
Term-end Examination of 5th and 8th class	No related section.	It has been inserted by amendment 2019 that the students of class 5th and 8th should be promoted via term-end examinations only as per the section 16.

JUDICIAL RESPONSE

Some of the cases related to RTE are as follows:

- 1) The right to education up to the age of fourteen has been elevated to the status of a basic right by the Supreme Court's verdict in Unni Krishnan, J.P. v. State of Andhra Pradesh and

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Ors¹⁰. The court also determined that under Article 21, the right to education should also be included.

- 2) In the case of *Banduka Mukti Morcha v. Union of India*¹¹, it has been held by the Supreme Court that the child should not work and the oppression of children should be gradually eliminated and other means of providing health care, nutritious food, safety should be promoted in school premises.
- 3) In the case of *T.M.A Pai Foundation v. the State of Karnataka*¹², the Supreme Court pointed out that the state legislatures and higher education institutions cannot control the policy framework of private education institutions beyond lingual and spiritual minorities, but they can develop instructional qualifications for the government-funded institution. In this case, the right of minority institutions under Articles 29 and 30 were highly promoted by the court.
- 4) In the case of *Mohini Jain v. State of Karnataka*¹³, it has been held by the Supreme Court that the right to education is a fundamental right and some seats should be reserved for the underprivileged in private institutions. Further, it has been held by the court that the private institution cannot charge more than what has been specified in the reserved seats.

CRITICAL ANALYSIS OF RTE

As discussed, the RTE is great legislation, however, it has certain shortcomings, let's discuss them in detail:

In my opinion, the act is only restricted to 14 years of age and doesn't address the concern of higher education. Apart from this, the Act also doesn't address the concern of primary education and leaves the grey area in this aspect.

The act is only focused on providing the children with formal education and aspect such as skills learning are not promoted by this act. This focus should be altered considering the need to provide quality education.

There is also no provision in the act to work on the infrastructure of the government-funded schools. Private institutions provide immense opportunities for children but there is no provision in RTE that enables the government-funded schools to directly come at par with the private institutions.

For delivering quality education, choosing appropriate teachers is very important. The RTE also

¹⁰Unni Krishnan, J.P. v. State of Andhra Pradesh and Ors, 1993 AIR 217.

¹¹*Banduka Mukti Morcha v. Union of India*, (1997) 10 SCC 549.

¹²*T.M.A Pai Foundation v. State of Karnataka*, AIR 2003 SC 355.

¹³*Mohini Jain v. State of Karnataka*, 1992 AIR 1858.

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doesn't provide any provision for establishing a proper procedure for appointing the teachers. Apart from this, there is no mention in RTE regarding the training of the teachers who are already employed.

The RTE also doesn't mention any penalty for violating the sections of the act and do not provide any punishment to government-funded school for any breach of the vision of the RTE.

I feel that the RTE mentions the fund given by the central government for providing education to the children, however, there are no provisions that mention the proper monitoring of the required allocation of these funds.

I hold the opinion that many people in India are not aware of the importance of education in India, so the government should definitely work for promoting awareness regarding the importance of education at the grassroot level so that more parents enroll their children in school.

CONCLUSION

The government's conception of the RTE was a tremendous move forward, but the result isn't all that amazing. The state must put in a lot of attempts to bridge the gap of this Act as well as education. Because education is the foundation of all advancement, be it personal development or development of the nation.

To prevent additional difficulties in execution, the government should evaluate the RTE Act, its viability, and execution, as well as explore further revisions to the RTE. India's future will be bright only if all young people, regardless of financial position, acquire a good education. Because it is the most important statute that prioritizes education, the RTE Act has serious problems that must be remedied.

The RTE is deficient in many areas, and the government and the public should engage together to bridge the gaps. The focus should not be on the premises or construction of the institutions, but rather on the quality of teaching and the teaching standards. This is also the cause of the decrease in human resources. Everyone should enhance the quality of education mainly because the children are the future of our nation.