

# Right To Education Act -2009-Concept & Constitutional Dimensions

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## Abstract

The Right to education is a fundamental human right proclaimed by Articles 13 and 14 of the United Nations International Covenant on Economic, Social and Cultural Rights (1966). Ratifying this document, state parties fully agree 'that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms'. The right to education is considered as a fundamental human right in a series of other 20<sup>th</sup> century international documents, which guarantee and protect this right for everyone. The constitution of India supports the right of universal education until age 14 and has had a long-standing goal of free and compulsory education for all children between the ages of six and 14. However, India remains a land of contradictions. Despite a vibrant emerging economy and a string of excellent colleges that produce high caliber professionals, India has not made the grade yet on primary education.

**Keywords:** Education, fundamental human rights, RTE and covenant, law

## INTRODUCTION

Education is globally recognized as a fundamental human right, and people with access to education can develop the skills, capacity and confidence to secure other rights. The right to education thus acts as an enabling right that functions as the voice through which rights can be claimed and protected. It is therefore an important stepping stone to improve the social situation of the people. The right to education is at the heart of the Education for All (EFA) programme as UNESCO's priority. It responds to the constitutional mandate of the Organization - ensuring "Full and equal opportunities for education for all" (emphasis added). The Dakar Framework for Action, adopted at the World Education Forum (2000), at which the right to education was reaffirmed, and the EFA goals were set, expresses the political commitment of the whole international community to: – expanding and improving comprehensive early childhood care and education, especially for the most vulnerable and disadvantaged children; – ensuring that by 2015 all children, particularly girls, children in difficult circumstances and those belonging to ethnic minorities, have access to, and complete free and compulsory, primary education of good quality;

## CONCEPT

The Universal Declaration of Human Rights (1948) which lays the moral foundation for human rights, proclaims that “every one has right to education” (Article 26 (1)). The legal framework of the right to education is laid down by UNESCO’s Convention against Discrimination in Education (1960) which is the first instrument in the field of education. The Convention establishes the entitlements to the right to education for various beneficiaries at all levels of education, including the right to universal primary education free of charge. It has been recognized by UNESCO’s Executive Board as a key pillar of EFA.

Several other instruments in the field of education, elaborated by UNESCO, develop the right to education in its different dimensions: the right to technical and vocational education established by the Convention on Technical and Vocational Education (1989), and the Revised Recommendation concerning Technical and Vocational Education (2001); the right to adult education, literacy and lifelong learning by the Recommendation on the Development of Adult Education (1976), and the Hamburg Declaration on Adult Learning (1997); the fundamental right of every child to quality education by the Recommendation concerning the Status of Teachers (1966); and the right to the pursuit of higher education by the World Declaration on Higher Education for the Twenty-first Century (1998). The right to education thus laid down is an internationally recognized right. It is an overarching right: a human right in itself and indispensable for the exercise of other human rights. Its main attributes are:

- Universal access to primary education free and compulsory for all;
- Accessibility to secondary education in its different forms as well as technical and vocational education which should be made generally available;
- Capacity-based access to higher education;
- Opportunities for continuing education and literacy programmes and lifelong learning;
- Minimum international standards of quality education and of the teaching profession.

## HISTORY OF RTE ACT IN INDIA

In order to fully understand the nature and the scope of the right to education as being universal, it is necessary to shed some light on its history. Ever since Independence, India has undertaken several initiatives to achieve universalization of elementary education, which has yielded mixed results. The Right to Education legislation in India has seen a chequered history in evolving from a directive principle to a fundamental right. In 1950, the Constitution articulated its commitment to education through its Directive Principles of State Policy. The 86<sup>th</sup> Constitutional Amendment was followed by multiple rounds of discussions (tabling) of right for free and compulsory education bills by the NDA and UPA governments), which made education a fundamental right for children in the age group of 6–14 years. The Act was introduced in Rajya Sabha in December 2008. It was passed in the Lok Sabha on 4 August 2009 and the President gave his assent to it on 26 August 2009. The Act came into force on 1 April 2010 as a fundamental right in India.

1910-47 1910: Resolution moved by Gopal Krishna Gokhale in the Imperial Legislative Council seeking Free and Compulsory Primary Education 1937: Mahatma Gandhi makes a plea for universalization of education 1944: Sargent Plan to achieve universal elementary education by 1984. Acceptance of importance of elementary education. 1947-86 - 1947: Constituent assembly explores avenues to achieve universal elementary education 1950: Directive Principles of State Policy (Article 45) directs state to endeavor to provide free and compulsory education to all children until 14 years of age within a period of 10 yrs 1968: Due to insignificant achievements, National Policy on Education urges serious efforts toward provision of free and compulsory education 1986: National Policy on Education resolves to provide all children free and compulsory education up to 14 years by 1995 Significant planning but insignificant achievements

1986-2009- 1992: India becomes signatory to the UN Convention on Rights of the Child, which requires states to recognize the right of the child to education 1993: Supreme Court in the case “J.P. Unnikrishnan and others vs State of Andhra Pradesh and others” asks state to honor the command of Article 45 of Constitution 2002: Public pressure generated after Unnikrishnan case spurs successive governments to make education a fundamental right. 86th Amendment 2002 makes elementary education a fundamental right 2003: The Free and Compulsory Education For Children Bill, 2003 (NDA government) 2004: The Free and Compulsory Education For Children Bill, 2004 (NDA government) 2005: The Right to Education Bill, 2005 (June) (CABE Bill) (UPA I government) 2005: The Right to Education Bill, 2005 (August) (UPA I government) 2006: Central legislation discarded. States advised to make their own Bills based on The Model Right to Education Bill, 2006 (UPA I government) 2008-09: Central legislation gets revised. President gives assent to The Right of Children to Free and Compulsory Education Act. The act to come in effect from April 2010. Public pressure and political will yields the game changing Act. The Right of Children to Free & Compulsory Education Act (2009) passed by the Parliament requires the state to provide free and compulsory education to all the children from the age of 6 to 14 years and has the potential to herald an era of inclusive growth in India.

## IMPLEMENTATION OF RTE REGULATIONS

1. Right to free and compulsory education: there should be no charges, direct or indirect, for primary education. Education must gradually be made free at all levels.
2. Right to non-discrimination: schools must not make any distinction in Provision based on sex, race, colour, language, religion, political opinion, nationality, ethnicity, ability, or any other status.
3. Right to adequate infrastructure: there should be an appropriate number of classrooms, accessible to all, with adequate and separate sanitation facilities for girls and boys. Schools should be built with local materials and be resilient to natural risks and disasters.
4. Right to quality trained teachers: schools should have a sufficient number of trained teachers of whom a good proportion are female; teachers should receive good quality pre-service and in-service training with built-in components on gender sensitivity, nondiscrimination, and human rights. All teachers should be paid domestically competitive salaries.

5. Right to a safe and non-violent environment: children should be safe on route to and in school. Clear anti-bullying policies and confidential systems for reporting and addressing any form of abuse or violence should be in place.
6. Right to relevant education: the curriculum should not discriminate and Should be relevant to the social, cultural, environmental, economic context and language of learners.
7. Right to know your rights: schools should teach human rights education and children's rights in particular. Learning should include age-appropriate and accurate information on sexual and reproductive rights.
8. Right to participate: girls and boys have the right to participate in decision making processes in school. Appropriate mechanisms should be in place to enable the full, genuine and active participation of children.
9. Right to transparent and accountable schools: schools need to have transparent and effective monitoring systems. Both community and children should be able to participate in accountable governing bodies, management committees and parents' groups.
10. Right to quality learning: girls and boys have a right to a quality learning environment and to effective teaching processes so that they can develop their personality, talents and physical and mental abilities to their fullest potential.

## SUGGESTIONS FOR IMPLEMENTATION OF THE RTE ACT

Suggestions are categorized under four broad areas:

**AWARENESS:** Awareness among communities about the Act is one of the key aspects for its successful implementation. At present, awareness among people about the Act is low. Unless people understand its contours, there will be limited initiative and ownership on their part. Civil society can play a much larger role in creating this awareness.

**CAPACITY DEVELOPMENT:** Capacity development is required at various levels to operationalize the Act. At the community level, SMCs and Panchayat Raj Institutions (PRIs) need to be trained about their roles and responsibilities; strengthening of systems and human resource development is also needed to make efficient use of available resources, and most importantly, teachers should be trained to impart child-centered education

**MANAGEMENT:** Management functions should be reviewed and bottlenecks in implementation of the Act identified. Planning and monitoring of programs is as important as improving the quality of education imparted. Both require different set of skills. Four tiers in the management structure need to be strengthened and empowered to make implementation of the Act more effective.

- ✓ The Centre should also address state-specific concerns and provide support, if required. If some states are dragging their feet in implementing the Act, the Centre can demand its implementation by linking it with the SSA and other development grants.
- ✓ The State Commission for Protection of Child Rights (SCPCR), which is the monitoring agency for implementation of the Act in different states, has not been effective in many of them. It is therefore important to ensure that an effective SCPCR is in place.
- ✓ Local authorities need to play a crucial role. Effective implementation of the Act will depend on how effective Gram Panchayats (GPs) and Nagar Palikas are. They need to be given sufficient resources to implement the Act.
- ✓ There should be a bottom-up approach and more autonomy given to schools. These should then be monitored through independent mechanisms.

## INNOVATIONS

There have been many innovations in the area of classroom transactions and distribution of entitlements from which one can learn. Today, technology can be put to good use to collect information and make planning more need-based. For example, the Delhi Government has initiated online attendance of teachers. The register closes at a specified time and teachers who do not mark their presence up to that time are marked absent. Similarly, teachers desirous of seeking transfers can make online requisitions and even give their preference for the schools to which they wish to be transferred. This helps to streamline the process of attendance and transfers.

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