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Right to Education (RTE) Act

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ABSTRACT

Education is a fundamental human right. It is a pre-requisite for human growth, and a country can only develop via the development of its inhabitants. The Indian Constitution mandates that the government give education to its inhabitants. The right to education is contained in the right to life entrenched in Article 21 of the Indian Constitution, which guarantees the right to live in dignity, and it is education that bestows human dignity. In India, there are a lot of obstacles to obtaining free and compulsory education. The major goal of this research study is to highlight the challenges of delivering education to all people.

INTRODUCTION

“Education is a social process. Education is growth. Education is not a preparation for life. Education is life itself.”

–John Dewey

Every individual, organisation, and institution, from philosophers, political thinkers, kings, queens, freedom fighters, colonial regimes, writers, activists, and artists to Malala Yusufzai, a young Pakistani student and Nobel Laureate, has recognised the importance of education as an intrinsic human right at some point. The International Covenant on Economic, Social, and Cultural Rights (ICESCR) of 1966 was one of the first international statutes to acknowledge this. It's a United Nations General Assembly-adopted global pact that India signed and approved. This treaty's articles 13 and 14 recognise everyone's right to a free education for "the full development

of the human personality and feeling of dignity¹" without discrimination².

It also establishes a progressive commitment to ensure access to higher education³ and provides for children's moral and religious education. Article 26 of the Universal Declaration of Human Rights (UDHR) of 1948 recognised the right to education. It requires universal access to primary education, equal access to higher education based on merit, and the broad availability of technical and professional education. Articles 1(a) and 1(c) of UNESCO's 1974 Recommendation Concerning Education for International Understanding, Cooperation, and Peace, as well as Education relating to Human Rights and Fundamental Freedoms, define education and place it under the purview of Human Rights and Fundamental Freedoms, as defined by the UDHR.

OBJECTIVES

1. This study is essential to know about the main provisions and features of the RTE Act.
2. To know about the challenges faced by Primary School teachers in implementing RTE Act.
3. To explore the measures for bridging the gap in implementation of RTE Act.
4. Study the evolution of the policies.
5. Seeing the objectives of the policy.
6. To know the judicial response with some case laws.

ISSUES

The problem of present study has been entitled Right to Education (RTE) Act.

HISTORICAL EVOLUTION IN INDIA

The Right to Education has a long and illustrious history in India. Since its establishment, it has always been a component of the Indian Constitution. It was, however, a DPSP. Part IV of the Indian Constitution, Sections 38, 39(a), 39(f), 41, and 45, allow for state-funded primary

¹ ICESCR, Article 13.1

² ICESCR, Article 13.2

³ ICESCR, Article 13.1

education. Let's take a look at how the Right to Education has evolved through Parliamentary Committees, court precedents, constitutional changes, the construction of a central act, and the formation of National Education Policies.

The Supreme Court highlighted the preamble in *Mohini Jain v State of Karnataka*⁴ in 1989, noting that it guarantees people's 'social, economic, and political fairness,' as well as 'equality of position and opportunity.' It also cited the DPSPs, whereby state-funded education is required. Furthermore, the court stated that Article 21's Right to Life and Personal Liberty includes the Right to Education. It went on to say that educational institutions' exorbitant capitation fees are in violation of Article 14.

*Unnikrishnan JP versus State of Andhra Pradesh & Others*⁵, a landmark Supreme Court decision from 1993, declared that the right to education till the age of 14 is a fundamental right under Article 21.

For children aged 6 to 14, the 86th amendment established the right to education as a basic right. It also required the passage of the Right to Education Bill of 2008. The Right of Children to Free and Compulsory Education Act 2009, also known as the Right to Education (RTE) Act, was enacted as a result of this.

OBJECTIVE OF THE POLICY

The act states its objective as follows:

“An Act to provide for free and compulsory education to all children of the age of six to fourteen years.”

Free education means that both the state and the federal governments share responsibility for funding the implementation of the act's provisions, which include building educational infrastructure, providing teacher training, covering the cost of transportation for children to get to schools that are far away, as well as the cost of uniforms, books, stationery, and other educational resources.

⁴ *Mohini Jain v State of Karnataka*, AIR 1992 SC 1858

⁵ *Unnikrishnan JP vs State of Andhra Pradesh & Others*, JT 1993 (1) SC 474.

Compulsory Education indicates that it is the responsibility of competent government authorities to assure entrance, attendance, and completion of primary education, as specified in the legislation. It is important to clarify that the legislation only applies to children aged 6 to 14 years old who are entitled to free and compulsory education. This implies that it only covers **primary education** (from kindergarten to eighth grade) and excludes higher education and professional degrees.

SUMMARY OF PROVISIONS

The salient features and highlights of the Act are summarized below:

- Provides **free and compulsory elementary education** to all children aged 6 to 14 years.
- **Concurrent financial responsibility** of Centre and State governments in a ratio of 55:45 (90:10 for north-eastern states) in funding/aiding the educational institutes.
- **Neighborhood School:** Appropriate government/ local authority to provide for a school within 1 km for children in classes I to V and within 3 km for children in classes VI to VIII.
- **25% reservation in private schools** for the disadvantaged section of society including SCs, STs, socially backward class, and differently-abled.
- **School Management Committees:** Government or Govt. aided schools to be managed by School Managing Committees. It should comprise of parents/guardians (75%) and elected officials from the local authorities (25%) as members.

CRITICAL APPRAISAL

Education is a progressive discovery of our ignorance.

-Will Durant⁶

Because of the increased enrolment in schools following the enactment of the RTE Act, the literacy rate has increased exponentially. These figures portray a rosy image of the situation, but the reality falls well short of what the government's claim to have accomplished. The focus of this investigation will be on how politicians have abused Sections 18 and 19 of the Act for personal advantage.

There is no doubting that private schools outperform public schools in terms of facilities,

⁶ U.S. Author and Historian, <http://www.lhup.edu/~dsimanek/eduquote.htm>

educational quality, teacher absenteeism, and overall child development. However, it has been seen that political parties have used **Sections 18 and 19** of the RTE Act to close down such unassisted private schools. Section 18 states that "no school shall be established without first obtaining a certificate of recognition," requiring private schools to obtain a government licence in order to operate freely, and Section 19 mentions "school norms and standards," requiring the closure of schools that do not adhere to these standards. The politicians' hidden objective behind the closure of such schools is multi-layered.

For starters, it assists them in maintaining a positive public image. This is because if there are fewer private schools, children will be forced to enroll in government schools, resulting in an increase in public school enrollments. This will be reflected in the data, demonstrating the government's effectiveness in attracting more pupils to government schools, which, in reality, is just a movement from well-equipped private schools to less well-equipped government schools. Furthermore, Section 12 (requiring a 25% reserve of underprivileged students in private schools) has resulted in the emptying of government schools, causing embarrassment to the administrations. Second, providing finances, paying teacher salaries, and maintaining such institutions with few or no pupils becomes financially difficult for the government.

Another important feature of Section 19 is that it exempts government schools from meeting infrastructural requirements. This exacerbates the problems that govt. schools face, such as low learning levels, exponentially high teacher absenteeism, and so on.

NATIONAL EDUCATION POLICY, 2020

AIMS

- GDP investment in education to be increased from 1.6% to 6%.
- Gross Enrollment Ratio to be increased to 50% by 2035.

SIGNIFICANT CHANGES

- HRD Ministry renamed as Ministry of Education.
- Pedagogical system modified and divided into (5+3+3+4) years.
- Playschool children included in formal education system as per global standards

OTHER CHANGES

- Students to learn coding from class 6th.
- Mother tongue to be medium of instruction till 5th grade.
- Report Card to be comprehensive based on skills and capabilities.
- Single regulator for higher education.
- MPhil. To be discontinued.
- Flexibility in choosing subjects for higher education.

AMENDMENTS

There have been two major amendments to this Act:

1. **Regular examinations** in the fifth and eighth grades are held at the conclusion of each academic year, and a kid who fails such tests will be granted additional education; nevertheless, he will be required to repeat the examination within two months after the result's announcement. This amendment was introduced to improve the country's educational standards.
2. **Scrapping of the 'No-Detention Policy'**: Initially, the RTE Act included a clause requiring schools not to hold any pupils for failing tests until they reached the eighth grade. While such a policy reduced school dropout rates, it resulted in noticeably lower educational quality⁷.

JUDICIAL RESPONSE

1. *State of UP v Pawan Kumar Dwivedi*:⁸ While acknowledging that free and compulsory education should be provided to children above the age of 14, the Supreme Court decided that such a right may only be limited to children under the age of 14 unless the state has the required economic capability and level of development. The court did, however, urge that the state work to raise the budgetary allocation and proportion of GNP funds dedicated to education.

⁷ Data from Central Advisory Board on Education (2014).

⁸ *State of UP v Pawan Kumar Dwivedi*, (2014) 9 SCC 692

2. ***State of Tamil Nadu v K. Shyam Sunder, AIR 2011 SC 3470***: This decision argued that a child's right to education should not be limited to free and compulsory education, but should also include access to high-quality education without discrimination based on economic, social, or cultural factors.
3. ***Election Commr. of India v St. Mary's School***:⁹ This was an unusual situation of constitutional conflict between two essential components of the constitution: the basic right to education and the conduct of elections. Teaching is a teacher's principal responsibility. Because they are government employees, teachers from government schools can be asked to conduct non-teaching activity of public interest such as polio vaccination, voter registration, and so on. As a result, the court determined that while electioneering is necessary, education must not be sacrificed in the process, and a balance must be maintained between both of a government teacher's responsibilities. The court suggested that instructors be assigned non-teaching tasks during non-teaching hours.
4. ***Society for Un-aided Private Schools of Rajasthan v UOI & Anr., (2012) 6 SCC 1***: Section 2(n) of the RTE Legislation contains a definition of "school" for the purposes of the act. Unaided non-minority schools are likewise included in these criteria in Section 2(n) (iv). However, because unassisted and non-minority schools do not get government subsidies, the rights of children under the RTE legislation are not relevant to them.

CONCLUSION

*"The entire process of social life by means of which individuals and social groups learn to develop consciously within, and for the benefit of, the national and international communities, the whole of their personal capabilities, attitudes, aptitudes and knowledge."*¹⁰

We can see that while this legislation looks nice on paper, it is not properly implemented.

⁹ *Election Commr. of India v St. Mary's School*, (2008) 2 SCC 390 (402)

¹⁰ UNESCO *Recommendation concerning Education for International Understanding, Co-operation and Peace and Education relating to Human Rights and Fundamental Freedoms*, 19 November 1974

According to the ASER Reports, the legislation is solely concerned with expanding student enrollment while entirely ignoring the quality of education and children's overall development. Furthermore, most government schools do not meet the RTE's requirement for an acceptable pupil-teacher ratio. Few governments have even given notice that 25% of places in private schools will be reserved for pupils from low-income families. Because similar reservations are not required for Minority Religious Institutes, several states believe this rule to be anti-Hindu.

To guarantee that excellent education is provided, the government should place a greater emphasis on teacher training programmes and penalise instructors who have low attendance. A more idealistic approach would be to pick only those instructors who are sincerely enthusiastic about teaching and regard it as a noble career, rather than those who see it as a means of making money. This may be accomplished by making the teacher selection process more rigorous and introducing an interview component as part of a free and fair screening procedure. This would encourage staff quality, and competent instructors would act as an incentive for pupils to attend school on a regular basis, putting incentives like the midday food plan on the back burner. This will also ensure a favourable teacher-to-student ratio in the sense that both the instructor and the student are hungry for knowledge.

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