

A Critical Analysis of RTE Act- 2009 and Its Implementation by UP Government

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Abstract

The fundamental rights and freedom allow an individual to develop fully and use his human qualities, intelligence, talent and conscience and to satisfy his spiritual and other needs. Education as a right which is also among basic human needs of food, shelter, clothing, water, sanitation and health helps the development and drawing out of these latent traits. Considering children among the first persons to get help, after a long journey, Indian parliament enacted The Right of Children to Free and Compulsory Education (RTE) Act, 2009 which came into force on April 1, 2010. The act has legal provisions of full time free and compulsory education in neighbourhood schools for children aged 6 to 14 years including children with disabilities, organization of a watch committee and establishment of a school in every area and prohibition of child labour. Uttar Pradesh government under Sarva Siksha Abhiyan (SSA) programme provided training on RTE to teachers with structured contents and teaching-learning guidelines based on National Curriculum Framework (NCF), 2005. It was found through the study that despite establishing "SAMWAAD (means Communication & also a teacher's handbook) among trainers and teachers, government is still the medium of transmitting RTE Act, 2009 and teachers remain more observers, rule followers than personality groomers and child rights' protectors. The researcher conducted the study through document analysis and telephonic interviews of 16 basic education teachers and 12 guardians from Mahoba and Jhansi districts of Uttar Pradesh using purposeful sampling procedure.

Keywords Rights, Education, Children, RTE 2009, SAMWAAD

Introduction

Every person is entitled to satisfy the basic human needs of food, shelter, clothing, household requirements and community services in respect to water, sanitation, health and education. It also means that everyone should have the right to education to develop fully. The fundamental freedom allows us to develop fully and use our human qualities, our intelligence, our talents and our conscience and to satisfy our spiritual and other needs. They are based on mankind's increasing demand for a life in which the inherent dignity and worth of each human being will receive respect and protection.

Through the process of education latent human qualities, intelligence, talents and conscience are fully developed that are allowed by human rights and fundamental freedom. Children have the right always to be among the first persons to get help and 'Right to Education' is the most essential help to them as *The Universal Declaration of Human Rights (1948) Article (26)* gives the right to every child to go to school. Accordingly, primary education should be free. The children should be able to develop all their talents, be taught to get on with others whatever their race, religion or the country they come from: their parents have the right to choose the kind of education for them. *The Convention on the Rights of the Child (1959)* declares in *Article (28)*; "State parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular- (a) Make primary education compulsory and available free to all....."

Efforts have been made to develop Universal Human Rights Culture which is possible through education only. In India social reformers and political leaders made high endeavours to make education inclusive and accessible to all against the privilege of education to people of high caste. In ancient and medieval India education was intertwined with religion and was not considered as a function of the state. Introduction of modern education and its progress was facilitated by the British to serve their vested interests as they wanted trained Indians for their politico-administrative machinery, but they neglected education of the Indian masses.

Demand for free and compulsory education has been raised at the early stage of the freedom struggle in British India. Dada Bhai Naoroji and Jyothiba Phule from



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Bombay demanded state-sponsored free education for at least four years. This demand was indirectly acknowledged in 1882 in the Hunter Commission's recommendations on primary education that schools should be open to all castes and classes. In 1906, the State of Baroda introduced the first law on compulsory education for boys aged 7 to 12 years and girls aged 7 to 10 years. Gopal Krishna Gokhale moved a Bill for compulsory education in the Imperial Legislative Council which was unsuccessful in 1911. Gandhi Ji mooted the idea of self-supporting 'Basic Education' for a period of seven years through vocational and manual training at The All India National Conference on Education held at Wardha in 1937. This concept of self-support was floated in order to counter the Government's constant excuse of lack of resources. The Post War Plan of Education Development, 1944 (Sargent Plan) recommended free and compulsory education for 8 years (6-14 years age group) was also a landmark in the history of Free to Compulsory Education in India. Despite consistent demand for FCE during the freedom struggle, at the time of drafting the constitution, there was no unanimous view that the citizens of India should have a right to education, let alone a fundamental right.

There have been many legal developments towards making education a fundamental right. Kothari Commission (1964-1966) reviewed the status of education in India and made recommendations to eliminate inequality in access to education. National Policy on Education 1968 was the first official document that is clear evidence of Indian Government's commitment towards elementary education and dealt with issues of equalization of educational opportunity while re-affirming the goal of universalization of elementary education. NPE 1986 did not recognize the right to education. This policy was revised by the Rammurti Commission in 1990 and this process brought Revised NPE 1992. The Rammurti Committee recommended RTE to be included as a fundamental right in Part III of the Constitution and the recommendation was not implemented immediately.

The 86th Constitutional Amendment Act, 2002 added Article 21A to the Constitution which requires the states to provide free and compulsory education to all children from the age 6 to 14 years. It also modified Article 45 (Directive Principles) to instruct the State to provide early childhood care and pre-school education. The government circulated a draft of the Right to Education Bill in 2005 which would implement the 86th amendment but did not introduce it to Parliament due to high financial implications of legislation.

The RTE Bill, 2008 seeks to give effect to the 86th Constitutional Amendment. It details the responsibilities of the Central and State Governments, teachers, parents and community members in ensuring all children between the age of 6 and 14 years receive free and compulsory elementary education. This modal Bill was enacted by the Parliament as *Right of Children to Free and Compulsory Education Act, 2009* on August 26, 2009 and was published in The Gazette of India on August 27, 2009. The Act came into force on April 1, 2010 in the whole of India except in the State of Jammu and Kashmir. It was implemented last year after the abrogation of article 370 and formation of new union territories Jammu and Kashmir and Ladakh.

Reasons and Objects of RTE

In spite of the Directive Principle of State Policy enumerated in the Constitution that the state shall provide free and compulsory education to all children up to the age of 14 years and expansion of elementary schools in the country, the goal of universal education could not be achieved. A large number of children especially from disadvantaged and weaker classes drop out of the schools before completing elementary education. The quality of learning achievement has not been satisfactory. Thus Article 21A was included in Fundamental Rights by 86th Constitutional Amendment, according to which free and compulsory education of all children in the age group of 6 to 14 years may be determined by the State. As a result, *RTE Bill 2008* was proposed to be enacted in RTE Act, 2009. Main *Highlights of the Bill* are followings:

1. Every child has a right to full time elementary education of satisfactory quality in a formal school between the ages of 6 and 14 years.
2. Government shall provide and ensure admission, attendance and completion of elementary education. Schools may not screen applicants during admission or charge capitation fees.

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3. No child shall be held back, expelled or required to pass a board examination until the completion of elementary education. A child who completes elementary education shall be awarded a certificate.
4. The Bill seeks to provide duties and responsibilities of the appropriate governments, local authorities, parents, schools and teachers in providing free and compulsory education.
5. A person who wants to file a grievance claim shall submit a written complaint to the local authority. Appeals shall be decided by either the State Commission for Protection of Child Rights or specified authority.

What makes RTE special among other Nations' Education Acts?

Followings are the features that make RTE special among other Nations' Education Acts:

1. The definition of 'free' goes beyond not giving and taking fees.
2. Compulsory Education' casts an obligation on the appropriate governments, not on parents/ guardians.
3. The Act emphasizes inclusive education eliminating all types of discriminations.
4. The Act ensures quality in the teaching-learning process.
5. The Act provides for the establishment of a separate Constitutional Commission to ensure implementation.
6. Determination of the norms and standards for schools.
7. The Act seeks to bring child rights to legal boundaries.

Key Issues and Analysis:

1. The Act places responsibility on the government to ensure enrollment of all children but does not identify which government agency will be responsible for this task. It is unclear how the appropriate authority will ensure and monitor that working children and children living on the streets without parents or guardians will be enrolled in schools.
2. The Act was enacted to provide free and compulsory education to all children of the age of 6 to 14 years. There is no specific provision in the implementation of the act that penalizes any violations of this fundamental right. As in RTI and MNREGA, the concerned government officer is required to address all complaints within a stipulated time period. There are no penalties. Even Section (37) of the Act seeks to provide for protection, against any legal suit or proceedings, to appropriate government, local authority, school management committee or any other person for any action taken in good faith.
3. According to Section (8) and Section (9) of the Act, both the appropriate government and the local authority share responsibility of providing free and compulsory education to everyone. Sharing of this duty may lead to neither government being held accountable.
4. The act provides for the right to schooling and physical infrastructure but does not guarantee the quality of education. Even the teachers' duties are not related to the learning achievements of their students.
5. Section (16) seeks to prohibit the holding back in any class or expelling a child from school till the completion of elementary education. This could result in children reaching the VIII standard without achieving certain learning outcomes.
6. The 25% reservation (Section- 12 Sub-section- 1 Clause- C) may contradict Article (30) of the Constitution in the case of minority schools, which states "all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice."
7. Government schools do not need to meet any norms (Section- 19 and Section- 25) except the pupil-teacher ratio and there is no consequences for failing to meet this basic norm, only private schools are subject to losing their recognition and shutting down if they do not comply with norms. The Act uses the term 'neighbourhood' but no definition is given.
8. Section (32) seeks to provide for a mechanism for redressal of grievances where the local authority shall receive grievance complaints regarding schools, teachers etc. The local authority will be both the implementing agency and the authority for grievance redressal. This could lead to a conflict of interest. If any person prefers to appeal to the State Commission for Protection of Child Rights, the Act does not provide a time limit for addressing complaints.

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9. The Act provides for the duty of parents and guardians to admit or cause to be admitted the child to an elementary education in the neighbourhood schools, but no penalty provision.
10. Government has failed to spread awareness about RTE among common men of the country.

Samwaad

Under *Sarva Shiksha Abhiyaan (SSA)*, a module named 'SAMWAAD' was developed in Uttar Pradesh to implement RTE, 2009 effectively. The module is a teacher's hand-book that contains RTE- 2009, NCF- 2005, UP RTE Rule-2011, important notifications and teaching guidelines. This is also a Teachers' Training Guide which presents thoughtful ideas on child rights and curriculum. SAMWAAD means "communication to everyone – child, parent/ guardian, teachers, members of the community and authority (local or government)".

According to the module, *NCF 2005* focuses on the followings:

1. Child-centred, flexible process
2. Freedom of the child
3. Encourage child to learn through cooperation
4. Active participation in learning
5. Learning broad social contexts
6. Knowledge is developed, created
7. Attitude of self-discipline
8. Diverse and different experience
9. Continuous and comprehensive evaluation

Special training was provided to elementary and secondary class government and aided school-teachers at state, district and block level for 04 days in the first phase after development of SAMVAAD module in September 2011 and 03 days in second phase. In the module, a team of experts revised the ideas related to different factors of quality education based on the suggestions proposed in NCF- 2005 to fight the challenges coming in the way of RTE.

Uttar Pradesh RTE Rules, 2011

Uttar Pradesh RTE Rules, 2011 was published in the notification of Department of Education on July 26, 2011 to implement RTE:

1. **Part I: Preliminary-** This part gives a clear cut definition of the terms used in the Rules that are different from the terms used in RTE.
2. **Part II: Free and Compulsory Education-** Based on the Section (4) of the Act, it provides how special training shall be given to the children not admitted to or who have not completed elementary education.
3. **Part III: Responsibilities of State Government and Local Authority-** It clearly describes the limits of neighbourhood area for class I to V (i.e. 1 km) and for class VI to VIII (i.e. 3 kms). Local authority (Gram Panchayat/ Municipal Corporation/ Municipality/ Nagar Panchayat) shall ensure that the child gets admission, dress, text-books free of cost, reaches the school safely without any social or cultural obstructions and no discrimination is made in the school. The Student's Profile must be up to date.
4. **Part IV: Responsibilities of Schools and Teachers-** It is mere expansion of the Sections- 12, 14, 15, and 18 of the Act.
5. **Part V: School Management Committee-** Provides for rules for electing SMC for 02 years based on Section (13). This part gives monetary rights to the SMC, responsibility to ensure admission, school norms, training, mid-day meals etc.
6. **Part VI: The Teacher-** Eligibility, duties and responsibilities of the teacher and provision of disciplinary action against him if he violates the Act.
7. **Part VII: Curriculum Development-** The provision for Section (29) and (30) of the Act. SCERT shall determine curriculum, evaluation process and school quality as a whole. A certificate shall be issued on the completion of elementary education. The certificate will include Pupil Cumulative Record and his achievements in extracurricular activities.
8. **Part VIII: Protection of Child Rights-** For successful implementation of Section (31), the part provides for the establishment of the Right to Education Protection Authority (RETA) until the State Government establishes a commission for the protection of child rights. A child Helpline Service shall be started.

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UP Government's Initiatives:

The researcher conducted telephonic and face to face interviews to know the ground reality of RTE Act-2009. The purposeful sampling of 16 basic education school teachers was done. They were selected purposefully from government school and private schools, 10 teachers from government schools and 06 teachers from private schools. This sample included 05 teachers from government schools and 03 teachers from private schools from both Mauranipur Block, Jhansi and Panwadi Block, Mahoba of Uttar Pradesh. Also, the opinions of 12 guardians were sought. This included 03 guardians from private schools and 03 from government schools from both Mauranipur Block, Jhansi and Panwadi Block, Mahoba of Uttar Pradesh. The researcher himself being a secondary education teacher and previously basic education teacher under UP Government has experience of these schools and also the good rapport and intimate relationship with the interviewees. It was easy to approach and access information from them even without being face to face. The following findings emerged:

(A) The Schedule of the Act based on Section (19) and (25) provides norms and standards for schools which most of the schools do not fulfill as :

1. A large number of primary schools do not have playgrounds; let alone play material, games and sports equipment.
2. Unavailability of libraries in schools and those that have libraries are not up to standards.
3. In government basic schools, TLM (Teaching Learning Material) aid was given to subject teachers. This aid was not provided in some years at the right time resulting in no TLM for particular subjects or only wall painting serving as TLM.
4. A large number of schools do not have boundary walls or fencing, even in urban areas. Even in the capital of the state, Lucknow, basic schools can be seen without fencing where drunkards come in the evening and have parties in front of Head Teacher's rooms.
5. No part time instructors for Art Education, Health and Physical Education and Work Education.
6. There is acute shortage of staff in government basic schools and at the same time, administrative bodies of government cause the violation of Section (27) which provides for prohibition of deployment of teachers for non-educational purposes, except for decennial census, disaster relief, elections to local authority, state legislature and Parliament. The teachers are deployed for vaccination duty, ration card certification purposes.
7. Many of the government schools are being run by a single teacher. Thus, the government is unable to maintain the pupil-teacher ratio which Section (25) of the Act seeks to provide for.

(B) Under Clause (e) Sub-section (1) of Section (24), teachers shall hold regular meetings with parents/ guardians and inform them about attendance, progress and other relevant things about the child. It is practically ignored in most of the government and private schools.

(C) SMC (School Management Committee) is influenced by politics. Members are the men of village Pradhans resulting Pradhans having to interfere in all monetary and non-monetary issues. It promotes corruption in the education system. Private schools have autonomy in this case. They are not ready to listen to guardians/ parents and the guardians have to abide by their local rules due to the hope of better quality education than government schools.

(D) Unrecognized schools are being run within the same premises in many private schools. They have become business centres and their managers, the businessmen charging high fees.

(E) Self-declaration cum Application for grant of recognition of schools under Rule (11) of RTE has been a false document filled by chairman/ manager of many of the private schools where qualified teachers are mentioned but in reality unqualified teachers are teaching.

(F) Section (23) Sub-section (1) of the Act is not followed in most of the private schools.

(G) The admission is denied if the child is unable to pass their screening tests in many private schools is a violation of Section (13).

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Conclusion

The Right of Children to Free and Compulsory Education Act, 2009 came into force on April 1, 2010. Total 11 years have passed but neither education has become free nor compulsory. The condition in the state can be understood from a story of repentance by a teacher, "I was posted in a village. A naughty boy always used to come late to class and get punished. I was negative towards him. Once he did not come to school for two weeks. When the boy came, I shouted at him asking why he did not come. Tears rolled out of his eyes. He did not speak. I slapped and he started weeping bitterly and he said that his father died. I repented and myself, wept alone in the bathroom." Here the teacher failed to establish proper 'Sambaad' with the boy. How many teachers are ready to improve their behaviour towards tender minds as the above mentioned teacher?

The children can be seen working in the shops, cleaning rail-compartments, performing skills of an acrobat in the streets, working in houses and in factories where there is danger to their life.

Most of the teachers of the country work out of fear from authority. They remain more observers, rule followers than personality groomers and child rights' protectors. The researcher remembers the time the year when the movie 'Tare Zami Par' was released. It was shown in many schools. But the researcher is of the opinion that the movie had to be shown to teachers twice than children.

Not all teachers are held responsible for quality education and full time free education, authorities are equally responsible. The researcher interviewed a teacher posted at Primary School Churari, Gram Panchayat- Jhankri, Mauranipur Block of Jhansi. He enrolled 09 boys and 08 girls from disadvantaged groups of minority communities. Their parents migrated from Rajasthan and were working as labourers. No other schools were ready to admit them due to lack of residential proof. The teacher arranges for all basic facilities such as dress, books etc. But the bank denied opening their accounts due to the same reason. Local authorities did not help and children were deprived of scholarships.

Money for mid-day meals is not up to the standard set by the government for each child and present market rates. Bags and books were late i.e. after August in previous years. Due to Covid-19, text books have been provided in September this year. The government has still not sent money for their uniforms and bags in many districts of Uttar Pradesh.

National curriculum for all states has developed so far which causes learning outcomes different and lower than the norms.

More than 40% of all basic education teachers in the country do not possess Bachelors. There is an acute shortage of trained teachers in the country as well as in the state, UP.

The big problem of the nation is two types of education systems where the poor send their child to government school and the rich to private. Thus, people who are in authority do not pay attention towards government schools.

Thus, everyone whose responsibility has been fixed in the Act should carry his duty and responsibility for effective implementation of RTE Act, 2009.

Objective of the Study

To critically analyze the Right to Education Act, 2009 and identify the outcome of the actions taken by the Government of Uttar Pradesh.

Methodology

The researcher conducted the qualitative study through library study and face to face and telephonic interviews of 16 basic education teachers and 12 guardians from Mahoba and Jhansi districts of Uttar Pradesh using purposeful sampling procedure.

Sampelling

16 basic education teachers and 12 guardians from Mahoba and Jhansi districts of Uttar Pradesh using purposeful sampling procedure.

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