

# The Effectiveness of Right to Education Act (2009) in Improving Access to Education among Disadvantaged Groups

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## **Abstract**

The Right of Children to Free and Compulsory Education Act, 2009 (RTE Act) is regarded as a landmark step taken by the government of India, as it recognized education as a fundamental right in the country. The Act aimed at providing free and compulsory elementary education to all children between the ages of 6 and 14, thereby making education accessible to all, irrespective of their socio-economic background.

This paper attempts to analyse the effectiveness of RTE in improving access to education among economically weaker sections and disadvantaged groups in India. Providing the historical background of the act, it proceeds to outline its features and analyse certain key performance indicators to understand the impact of RTE. It also discusses in length Section 12(1)(c) of the RTE Act and highlights the legal lacunae and various gaps existing in its implementation. This study concludes that even more than a decade after the implementation of RTE, the goal of creating an inclusive education system remains a work in progress and provides certain suggestions to enhance the effectiveness of RTE in achieving its objective of universalizing elementary education.

## **Introduction**

Right to education is regarded as a fundamental human right under Article 26 of the Universal Declaration of Human Rights which states that “Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit”. The Indian Constitution is committed to the ideals of social justice providing education to the citizens is indispensable to accomplish this herculean task. Article 45 of Part IV of the Indian Constitution explicitly mentions that it is the state’s responsibility to provide free and compulsory education to all children until they complete the age of fourteen years. However, it was after several decades of independence that the Indian Parliament finally enacted the Right to Education Act in 2009.

The RTE Act was enacted to provide elementary education to all. It aimed to make education accessible to disadvantaged groups, who were socially and economically backward, thereby empowering them and making them capable of realising their potential to the fullest. With zero tolerance towards discrimination on any grounds in education, it was believed that this act would be effective in improving access to education among disadvantaged groups in India but as the current trends reveal, the education system in

India is still far from being inclusive. It is not only plagued with the problem of ambiguous and vague provisions but also an impractical approach to providing disadvantaged groups access to education without considering the ground-level realities.

## **Evolution of the Act**

Universalisation of elementary education has always been the agenda of the Indian constitution however, it was never recognized as a fundamental right. It was in 1990 that the inclusion of the right to education as a fundamental right was recommended for the first time by the Acharya Ramamurti committee. Thereafter, it was in the **Mohini Jain v. State of Karnataka** (1992 AIR 1858) the apex court recognized the right to education as a fundamental right. The judgement stated that “the right to education flows directly from the right to life. The right to life and the dignity of an individual cannot be assured unless it is accompanied by the right to education.” In the light of this judgement a five-judge bench in the **J.P. Unnikrishnan v. State of Andhra Pradesh** (1993 AIR SC 2178) further observed that it was the state’s responsibility to provide both educational facilities and opportunities. The court clearly mentioned that “the right to education further means that a citizen has a right to call upon the State to provide educational facilities to him within the limits of its economic capacity and development”. These judicial decisions provided a big impetus for Elementary Education as a fundamental right and were instrumental in drawing the attention of the government to this issue. A major development occurred with the 86th Constitutional Amendment Act of 2002 which made certain changes in the Indian Constitution by introducing Article 21-A and making the right to education a fundamental right. It stated that “ The State shall provide free and compulsory education to all children of the age six to 14 years in such a manner as the state may, by law, determine”. The RTE Act was the consequential legislation, passed after considerable debates and discussions which aimed at implementing and achieving the goals of this amendment. Thus, the RTE Act is an enabling legislation that was passed in August 2009 as ‘The Right of Children to Free and Compulsory Education Act, 2009. The Act came into effect in the whole of India except the state of Jammu & Kashmir w.e.f. 1 April 2010.

## **Features**

1. Right of children to free and compulsory education till completion of elementary education in a neighbourhood school.
  - a. Free education means that no child, other than a child who has been admitted by his or her parents to a school that is not supported by the appropriate Government, 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.

- b. 'Compulsory education' casts an obligation on the appropriate Government and local authorities to provide and ensure admission, attendance, and completion of elementary education by all children in the 6-14 age group.
2. It provides for the appointment of appropriately trained teachers, i.e. teachers with the requisite entry and academic qualifications.
3. It prohibits
  - a. physical punishment and mental harassment
  - b. screening procedures for admission of children
  - c. capitation fee
  - d. private tuition by teachers
  - e. running of schools without recognition
4. It has laid down norms and standards for ensuring good quality of education
  - a. Maintaining the necessary pupil-teacher ratio is maintained in every school without any urban-rural imbalance at all, allowing for the sensible deployment of teachers.
  - b. It also necessitates the appointment of instructors with the requisite academic and professional training.
5. Focuses on the development of a curriculum that ensures the all-round development of the child.
6. Private unaided institutions and special category schools shall provide free and compulsory education to at least 25% of children belonging to disadvantaged groups and socially and economically weaker sections.
7. According to the Right to Education Act, a child who is not enrolled in school must be accepted to a class for their age and get specialised instruction to help them catch up to age-appropriate learning levels. All government and aided schools shall set up a School Management Committee consisting of elected representatives of the local authority, parents of children admitted in such schools and teachers, with 75 percent of members as parents or guardians.
8. Section 7 of the RTE Act provides for the financial responsibilities of the Central and state governments for implementing the provisions of the act. According to the section the expenses for RTE would be shared between the centre and the states in the 65:35 ratio.

## **Amendments to the Act**

1. Right of Children to Free and Compulsory Education (Amendment) Bill, 2017  
It amended the Right of Children to Free and Compulsory Education Act (RTE), 2009 by extending the earlier deadline, which was 2015 for teachers to acquire the prescribed minimum qualifications for appointment, till 2019. The amendment act aimed at providing the in-service untrained teachers the opportunity to complete their training via the SWAYAM platform.
2. The National Achievement Survey(2012), The Central Advisory Board of Education (2014) and the Economic Survey (2016-17) observed the declining quality of education even after the implementation of RTE. They argue that there was a need to focus on the learning outcomes of students in school. It was the concern regarding the quality of education that a Parliamentary Committee asked the Ministry of HRD to rethink the no-detention policy. Also, a sub-committee under the CABE revealed the reservations among the parents and teachers regarding this clause of RTE arguing how it demotivated students to work hard and score well. The panel not only stressed the no-detention policy but also the proper implementation of Section 12 of RTE and improving the infrastructure of schools. It was the opposition by the parliamentary panel against automatic promotion under RTE that provided an impetus to the amendment abolishing the no-detention policy.  
The Right of Children to Free and Compulsory Education (Amendment) Act, 2019 was passed by the Parliament on January 3, 2019. It aimed at abolishing the no-detention policy in schools which was believed to have an adverse effect on the learning levels of children as section 16 does not allow holding back children in any class till the completion of elementary education.

## **Significance of Act**

1. The Right of Children to Free and compulsory education Act explicitly declares that the state must act as the regulator and guarantor of education as a fundamental human entitlement. It ensures that education which is necessary for the development of an individual and society as a whole is regulated by the public sector making it obligatory for central and state governments, even the local governments to ensure that this fundamental right is not violated.
  - a. It stresses strengthening the public school system, however, whether the State has been successful in doing so is debatable, and focuses on the

regulation of the private sector in education in order to prevent commercialization and corporatization in the education sector

2. A major impact of the RTE Act was in improving the infrastructure of the schools. There have been significant improvements in the social infrastructure of schools since the inception of the act. There has also been a significant increase in enrolment in primary and upper primary schools.
3. As a major step towards establishing an inclusive education system in India this act provides for zero tolerance against the harassment and discrimination of children on any grounds be it caste, class, religion, or gender.
4. RTE Act is justiciable and provides for a Grievance Redressal mechanism allowing people to take action when the provisions of the Act are not complied with. This ensures that non-compliance with the provision of RTE is strictly dealt with.

### **Comparative analysis of key performance indicators: Pre and Post-RTE**

The enactment of the RTE Act made India one of the 135 countries which have recognized education as the fundamental right for every child. Undoubtedly, the goals and objectives of RTE are laudable and aim toward building an inclusive society, one needs to take cognizance of the implementation of the policies enshrined in the Act in order to assess the impact of RTE. This paper attempts to assess the impact of RTE in making education accessible and affordable to the disadvantaged sections of society by comparing the key performance indicators of educational development before the inception of the RTE Act and after its implementation.

### **Student enrolment at primary and upper primary level**

One of the key indicators used for assessing the impact of RTE in improving the accessibility of elementary education is the gross enrolment ratio (GER). Universalization of elementary education includes certain components, namely, universal access, universal participation, and universal retention and it is primarily the enrollment data that provides an understanding of these three crucial components. Moreover, it also helps in grasping the social disparities as well as the regional disparities that exist in the educational development of disadvantaged groups and backward regions respectively.

LEVEL	Gross Enrolment Ratio <sup>1</sup> (in%)		
	2009-10 <sup>2</sup>	2015-16 <sup>3</sup>	2021-22 <sup>4</sup>
PRIMARY	113.8	99.2	103.39
UPPER PRIMARY	81.7	92.8	94.67

**Table-1**

The data in the above table shows that there has been a steady increase in the Gross Enrolment Ratio since the implementation of the RTE Act which implies a significant improvement in accessibility and participation in education but it doesn't demonstrate the impact of RTE on the disadvantaged sections of society for which data specifically on these groups are required.

## Gender Parity

Universalisation of education means education for all and this includes women as well, however, in a country like India where patriarchy is deeply ingrained in its culture, providing education to girls is a challenging task. Fortunately, since the enactment of RTE, there has been a significant increase in the enrollment number of girls, especially in the upper primary sections. The gender parity Index, obtained by evaluating the ratio of female GER to male GER, is used to measure the relative access of boys and girls to education. A GPI value of 1 indicates equal access to education for both boys and girls.

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<sup>1</sup> GER refers to the total enrolment in a specific level of education, regardless of age, expressed as a percentage of the eligible official school-age population corresponding to the same level of education in a given school-year. School-age Population: Population of the age group which officially corresponds to the relevant level of education.

<sup>2</sup> Statistics of School Education

[https://www.education.gov.in/sites/upload\\_files/mhrd/files/statistics-new/SES-School\\_2009-10.pdf](https://www.education.gov.in/sites/upload_files/mhrd/files/statistics-new/SES-School_2009-10.pdf)

<sup>3</sup> Educational Statistics at Glance

[https://www.education.gov.in/sites/upload\\_files/mhrd/files/statistics-new/ESG2016.pdf](https://www.education.gov.in/sites/upload_files/mhrd/files/statistics-new/ESG2016.pdf)

<sup>4</sup> UDISE+ 2021-22

[https://www.education.gov.in/sites/upload\\_files/mhrd/files/statistics-new/udise\\_21\\_22.pdf](https://www.education.gov.in/sites/upload_files/mhrd/files/statistics-new/udise_21_22.pdf)

Level	Gender Parity Index		
	2009-10 <sup>5</sup>	2015-16 <sup>6</sup>	2021-22 <sup>7</sup>
Primary	1.00	1.03	1.03
Upper Primary	0.94	1.10	1.00

**Table-2**

It can be said from the data, mentioned in the above table, that the Indian education system has made satisfactory progress in reducing the gender disparity in elementary education. Moreover, the data brought to the fore by the UDISE+ revealed that the retention rates<sup>8</sup> for girls in elementary education have been higher than that of boys which is a positive development as it implies that more girls are participating in school education.

### **Scheduled Castes**

Universalisation of elementary education implies education for all irrespective of any differences based on religion, sex, or caste and this certainly includes the Scheduled caste population which accounts for 16.65% population of India. Even though today the rigidity of the caste system in India, as claimed by many social anthropologists, has loosened its presence and impact has not fully subsided or declined. The caste factor still plays a significant role both in social and political life. Given the discrimination that SCs, earlier designated as the untouchables, had to face or rather have to face even today in some regions, education became indispensable as a means of ensuring their upward social mobility and RTE was a major step towards this.

<sup>5</sup> Statistics of School Education

[https://www.education.gov.in/sites/upload\\_files/mhrd/files/statistics-new/SES-School\\_2009-10.pdf](https://www.education.gov.in/sites/upload_files/mhrd/files/statistics-new/SES-School_2009-10.pdf)

<sup>6</sup> Educational Statistics at Glance

[https://www.education.gov.in/sites/upload\\_files/mhrd/files/statistics-new/ESG2016.pdf](https://www.education.gov.in/sites/upload_files/mhrd/files/statistics-new/ESG2016.pdf)

<sup>7</sup> UDISE+ 2021-22

[https://www.education.gov.in/sites/upload\\_files/mhrd/files/statistics-new/udise\\_21\\_22.pdf](https://www.education.gov.in/sites/upload_files/mhrd/files/statistics-new/udise_21_22.pdf)

<sup>8</sup> Retention Rate refers to the percentage of a cohort of pupils (or schools) enrolled in a first grade of a given level of education in a given school year who are expected to reach the last grade of the level UDISE+ (2021-22)



Level	GER of SC Students(in%)		
	2009-10 <sup>9</sup>	2015-16 <sup>10</sup>	2021-22 <sup>11</sup>
Primary	125.3	110.9	113.1
Upper Primary	88.3	95.4	103.79

**Table-3**

The data in Table-3 shows that over the years the GER of Scheduled Castes has increased, especially in the upper primary sections. The impact of the RTE Act has indeed been positive in providing elementary education to the SCs. However, only assessing the impact of RTE on the basis of GER is not enough as not much data is available on the retention rate of the SCs in schools. Given the higher concentration of SCs and STs in Uttar Pradesh and Bihar as well as the highest number of out-of-school children in these states there is a need to collect more state-specific data to ensure that caste does not hinder the goal of achieving the goal of RTE Act.

### **Scheduled Tribes**

Scheduled Tribes account for 8.6% of India's population as per the 2011 Census. Scheduled tribes have been always more vocal and assertive about their identity as compared to the SCs and the OBCs. Integrating STs into mainstream society has always been a challenging task for the government as several tribal groups view such attempts of government as undermining their cultural practices. Nevertheless, since the inception of the RTE Act improvements have been registered in the educational development of the STs especially in the upper primary section. However, similar to the case of the SCs, no proper data is available on the retention rates and the dropout rates of the STs at the elementary level due to which there is not much clarity on the educational development of the STs in India.

<sup>9</sup> Statistics of School Education

[https://www.education.gov.in/sites/upload\\_files/mhrd/files/statistics-new/SES-School\\_2009-10.pdf](https://www.education.gov.in/sites/upload_files/mhrd/files/statistics-new/SES-School_2009-10.pdf)

<sup>10</sup> Educational statistics at a Glance

[https://www.education.gov.in/sites/upload\\_files/mhrd/files/statistics-new/ESG2016.pdf](https://www.education.gov.in/sites/upload_files/mhrd/files/statistics-new/ESG2016.pdf)

<sup>11</sup> UDISE+ 2021-22

[https://www.education.gov.in/sites/upload\\_files/mhrd/files/statistics-new/udise\\_21\\_22.pdf](https://www.education.gov.in/sites/upload_files/mhrd/files/statistics-new/udise_21_22.pdf)

Level	GER of ST Students(in%)		
	2009-10 <sup>12</sup>	2015-16 <sup>13</sup>	2021-22 <sup>14</sup>
Primary	135.5	106.7	106.5
Upper Primary	84.3	96.7	98.0

**Table-4**

### **CWSN(Children With Special Needs)**

RTE, enacted with the goal of providing quality and meaningful education to all, provides a special focus on Children With Special Needs (CWSN). One of the greatest achievements of RTE has been a significant increase in the enrolment rates of the CWSN. Not only the enrolment rates of the CWSN has nearly doubled as compared to their enrolment in 2009-10 but the dropout rates have considerably dropped from 9% to 6%<sup>15</sup>. According to the UDISE+ Report(2021-22) around 22 lakh CWSN students have been enrolled in schools. Emphasis is being laid on providing such students with appropriate learning aids, and specially trained teachers, as well as options for home-based schooling, are also being explored at the elementary level.

### **Infrastructural developments**

Proper school infrastructure is indispensable to the development of an inclusive education system and RTE has been quite successful in improving the social infrastructure of the schools in India but a lot needs to be done in order to strengthen the digital infrastructure in schools.

### **Drinking water and Sanitation**

Besides imparting education to students, one of the primary responsibilities of schools is to provide safe drinking water and proper sanitation facilities to them. Lack of proper

<sup>12</sup> Statistics of School Education

[https://www.education.gov.in/sites/upload\\_files/mhrd/files/statistics-new/SES-School\\_2009-10.pdf](https://www.education.gov.in/sites/upload_files/mhrd/files/statistics-new/SES-School_2009-10.pdf)

<sup>13</sup> Educational statistics at a Glance

[https://www.education.gov.in/sites/upload\\_files/mhrd/files/statistics-new/ESG2016.pdf](https://www.education.gov.in/sites/upload_files/mhrd/files/statistics-new/ESG2016.pdf)

<sup>14</sup> UDISE+ 2021-22

[https://www.education.gov.in/sites/upload\\_files/mhrd/files/statistics-new/udise\\_21\\_22.pdf](https://www.education.gov.in/sites/upload_files/mhrd/files/statistics-new/udise_21_22.pdf)

<sup>15</sup> Assessing the Impact of RTE

<https://assets.kpmg.com/content/dam/kpmg/pdf/2016/03/Assessing-the-impact-of-Right-to-Education-Act.pdf>

washrooms and toilets is one of the major reasons behind the higher dropout rates of girls in schools, especially in the upper primary sections. The RTE Act aimed at tackling this problem by involving the community in the construction and maintenance of proper school infrastructure. Currently, around 97% of schools have girls' toilets and 98% of schools have drinking water facilities. (UDISE+ Report 2021-22)

### **Facilities for CWSN students**

The last three years witnessed an increase in the enrolment rates of CWSN students, however, according to the UDISE+ Report (2021-22) only 26% of schools have CWSN-friendly toilets and only 49% of schools have ramps with handrails facilities. It is necessary that these facilities are incorporated into schools to promote inclusive education ensuring that CWSN students do not feel alienated.

### **Section 12 (1)(c) of the RTE Act**

Committed to the aim of Universalisation of elementary education, the RTE Act endeavours to make the school system more equitable, accessible, and inclusive. It is based on the ideas of equity, social justice, and democracy and strives to provide inclusive elementary education to all which is essential for the creation of a just and humane society. Section 12(1)(c) of the RTE Act states that “Provision of free and compulsory education of satisfactory quality to children from disadvantaged and weaker sections is, therefore, not merely the responsibility of schools run or supported by the appropriate Governments, but also of schools which are not dependent on Government funds”. This section of RTE which mandates all the private unaided schools to reserve 25% of the seats in class I or their entry-level seats for economically weaker sections and disadvantaged groups has drawn the most attention and controversy so far.

### **Explanation**

Section 12(1)(c) of the RTE Act reads that “Private unaided institutions and special category schools shall provide free and compulsory education to at least 25% children belonging to disadvantaged groups and weaker sections admitted to class I or pre-primary classes. Such schools would be entitled to reimbursement at the per-child cost incurred by the Government. It has also since been clarified that residential private unaided schools, which do not start at class I, would not be required to admit 25% of children from

disadvantaged groups and weaker sections in their schools”.<sup>16</sup> The RTE Act declared that the state must act as the regulator and guarantor of education as a fundamental right and given the rise in the number of private schools it was essential to develop a sort of partnership with them to provide good quality and affordable education to all. The purpose of this particular section of the RTE Act was to create an accessible environment that enabled children from diverse backgrounds and different socio-economic strata to share interests and knowledge on a common platform and desegregate what has become a segregated society. It was hoped that it would be instrumental in achieving the larger goal of universalization of elementary education by providing economically weaker sections and disadvantaged groups avenues of quality education.

### **Disadvantaged Groups**

Section 2(d) of the RTE Act provides the definition of the term disadvantaged group which refers to “a child belonging to a Scheduled Caste, Scheduled Tribe, a socially and educationally backward class, or such other group having disadvantages owing to social, cultural, economical, geographical, linguistic, gender or such other fact, as may be specified by the appropriate Government, by notification.’

### **Economically Weaker Section**

Section 2(e) of the RTE Act defines the term Economically Weaker Sections as A child belonging to weaker section’ refers to “a child belonging to such parent or guardian whose annual income is lower than the minimum limit specified by the appropriate Government, by notification”.<sup>17</sup>

### **Issues in the implementation of section 12(1)(c)**

1. Section 12(1)(c) of the RTE Act was incorporated with the intention of increasing the participation of the private sector which is one of the major stakeholders in the education system, in providing education to the marginalised sections. However, the ground reality of the implementation of this Act is different and varies considerably from state to state.
2. The RTE Act is implemented at the state level which provides states with the power to follow their own parameters while deciding the EWS status. The lack of

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<sup>16</sup> [THE RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT, 2009 Clarification on Provisions Chapter 1: Preliminary Section 2](#)

<sup>17</sup> [The Right of Children to Free and Compulsory Education Act, 2009](#)

clarity related to the definition of the EWS category has resulted in a wide disparity between the limits set by various governments such as in Delhi, Uttar Pradesh, and Maharashtra the income limit is 1,00,000 while in Rajasthan it is 2,50,000. Moreover, this section requires the private schools to admit 25% of students from these categories in class 1 and provide them free education till its completion. However, the income certificate is required only at the time of admission and it doesn't make it clear what is to be done if the economic status of the child's family improves within a few years after admission to the school.

3. The schools providing admissions to such children would be “reimbursed expenditure so incurred by it to the extent of per-child expenditure incurred by the state, or the actual amount charged from the child, whichever is less”. However, there exists confusion regarding the reimbursement for the children enrolled in pre-primary sections. Moreover, the Act mentions that the private schools need to provide free education to children of EWS and DG to the extent of at least 25% of the strength of the class which means that they could admit more than 25% but the state will be required to reimburse the expenditure of all the students whether it is below or above 25%. Besides, there are also problems related to the transparency of cost calculation and reimbursement to private schools by the state.
4. Finally, one of the major issues which have become a debatable topic is the exemption of all the schools run by minority communities, whether aided or unaided from the obligations of the RTE Act. It is argued that there is a need to strike a balance between Article 21-A and Articles 29 and 30 of the Constitution and ensure that the exemption is limited to the unaided minority schools.

### **Failure of Implementation of Section 12(1)(c)**

1. According to the 2021 report of the National Commission for Protection of Child Rights(NCPCR), section 12(1)(c) of the RTE Act has not been implemented throughout the states of India. Only 16 states and union territories have implemented the section, namely, Assam, Bihar, Chandigarh, Chhattisgarh, Delhi, Gujarat, Himachal Pradesh, Jharkhand, Karnataka, Madhya Pradesh, Maharashtra, Odisha, Rajasthan, Tamil Nadu, Uttarakhand, and Uttar Pradesh. Even among the states that have implemented this 25 % criterion, some states have failed miserably.
2. According to the provisions of this section the states are required to reimburse these schools and the reimbursement amount is mandated to be the lower of the per-child expenditure incurred by the government or the actual amount charged from school by the child.

- a. However, there is no reliable and transparent process for calculating costs and reimbursement amounts. There is no clarity on the method of calculation adopted by the state governments to calculate these costs.
- b. The states rely on funds from the Central government for RTE reimbursements. In accordance with the data available for 2019-2020, 15 states sought funds from the Central government but the approved reimbursement claims are significantly lower than the amount proposed by states.
- c. Moreover, the states do not reimburse the amount received from the centre to the private unaided schools on time which is detrimental to the admission process.. This also entraps the private unaided schools in a difficult position wherein they have impending dues not cleared by the state which in turn leads to further reimbursement claims being rejected adding to the delays in the reimbursement process. This is a major failure on the part of both the state and the central government in the implementation of this section.
- d. Another issue related to this matter is RTE reimbursements are inadequate reimbursements provided to private schools. It has been found that the states only reimburse the tuition fees to the private unaided schools due to which the uniforms and textbooks which should be provided free of cost to the students by the schools are not provided. They are deprived of these additional benefits which increases the out-of-pocket expenditure of the families of these students. Also, because of the inadequacy and delay in reimbursements, the private schools are reluctant to implement the 25% reservation and it also disincentivizes eligible children to take up admission under this section. This is the primary reason behind the underutilization of the 25% reservation provision of section 12(1)(c).

## **Role of the States**

The RTE Act is implemented at the state level which provides states with the authority to set up the requirements and the eligibility criteria for admission under section 12 (1)(c). This requires the states to play a proactive role in defining and clarifying the income levels, and age limits and lay down proper rules for admission.

The states should also endeavour to set up committees for assessing per-child expenditure and specify the methodology used for cost calculation so that transparency is maintained. Currently, only 12 states have set up such committees.

Besides, the states have a major role to play in ensuring timely and reliable reimbursements to schools. Since there is no proper tracking system to monitor the reimbursement transactions the state along with the central governments can coordinate with the banks to expedite the process of reimbursements.

### **Is Education Really Accessible to All?**

More than a decade has passed since the inception of the RTE Act, and considerable progress has certainly been made but still, a lot needs to be done to achieve the goal of Universalisation of elementary education. Education, as Dr. Amartya Sen, has rightly remarked, provides a person with the freedom and opportunity to make the fullest use of their potential. It facilitates public discussion of social needs and not only enhances the social mobility of disadvantaged groups but also increases their ability to fight and stand up against any form of oppression. However, in a society like India with deeply entrenched social stratifications based on religion, caste, and gender among others, discrimination in educational development is still prevalent.

### **Disadvantaged Groups and RTE**

The RTE Act provides a clear definition of the disadvantaged groups which include children belonging to socially and economically backward sections of society which include SCs, STs, EWS, migrants, Muslim minorities, and others. The gross enrolment ratio reveals that there has been considerable improvement in making elementary education accessible to them, but this does not reveal the true picture of RTE implementation and its outcome. One of the major criticisms of RTE has been its failure in implementing Section 12(1)(c). The major problem has been the inter-state variations, whether it is related to specifying the income limit for those who can avail of the benefits of RTE, providing a fixed quota to SCs, STs, and EWS students, or framing rules related to reimbursements of expenditure incurred by private schools. The situation has become even more complex with the increasing number of private schools and the deteriorating performance of government schools which has increased the number of applicants for RTE. Another persistent problem has been the issue of non-compliance of states with the RTE rules. These major gaps in RTE implementation have been the cause of the inaccessibility of the 25% quota in private unaided schools by socially and economically backward groups.

Firstly, the major problem faced by the parents of such children is during applying for RTE, especially for those who are uneducated and are not well acquainted with English. Such

parents often face difficulties not only in filing the form for RTE but also are discriminated against and humiliated by the private schools. Parents have often complained of being treated like second-class citizens. Besides, there are several documents such as income certificates, community certificates, address proof, etc. for RTE application. Procuring these certificates is often difficult for them, especially for the SCs and STs and it is because of such strict documentation that several students lose their seats because of minor technicalities. Another issue is the lack of clarification regarding neighbourhood schools. The distance criterion in the Act is problematic because if there are no private schools within a prescribed distance from the residence then these children are incapable of getting admitted to other private schools under the RTE Act.

The second issue is that the reservation in private unaided schools is not based on caste but on income limit which varies among the states. Some states like Odisha and Andhra Pradesh have provided caste reservations. In Andhra Pradesh, 19% of the seats are reserved for disadvantaged groups (10% for SCs, 4% for STs, and 5% for others) while 6% is reserved for Economically weaker sections and OBCs. In Odisha, 10% is reserved for scheduled caste and scheduled tribe students, 10% for children from BPL families, and 5% for children without a home. While these states have laid down the rules for reservation the others haven't, which results in the open category deriving the maximum benefits of RTE and acquiring the maximum seats under reservation.

Another persistent issue with the implementation of section 12(1)(c) is the denial of admission to students from the EWS & DG category by the private schools. The national rate at which the seats reserved under section 12 (1)(c) is filled veils the huge variations in state-wise performances. For instance, in 2013-14, Madhya Pradesh had a fill rate of 88.2 percent and Rajasthan's stood at 69.3 percent. The performance of these two states was in stark contrast to that of Uttar Pradesh, for example, which had a fill rate of 3.62 percent, and Andhra Pradesh with 0.21 percent<sup>18</sup>. Though Uttar Pradesh has made significant improvements in this particular aspect in the last few years, still, in 2022-23 out of the 1.24 lakh seats allotted to children in private schools only 64% of students got admissions. Besides, out of 1,04,823 private schools only 20% i.e., 21,274 have registered on the online portal of RTE. The data reveal that only one-third of the seats available under RTE are actually filled, moreover, there is no data on the retention rates of these students. This issue is clearly visible in the city of Mumbai, Maharashtra where the number of applicants outnumbered the available seats for RTE but more than 40% of the seats remained vacant.

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<sup>18</sup> State of the Nation: RTE Section 12(1)(c) [https://accountabilityindia.in/sites/default/files/state\\_of\\_the\\_nation\\_-\\_section\\_12\\_1\\_c\\_csf\\_mar\\_ch\\_2015.pdf](https://accountabilityindia.in/sites/default/files/state_of_the_nation_-_section_12_1_c_csf_mar_ch_2015.pdf)



Around 15143 parents applied for 6481 seats under RTE but only 3670 students got admission.

Recently, a petition was filed in Kerala where the petitioner alleged that the unaided schools in Kerala were not following the mandate under RTE. As a response to this petition, the Kerala High Court ordered the Directorate General of Education to ensure compliance with Section 12(1)(c) as per the guidelines laid down by the government. While there are several reasons behind this problem of non-compliance, the major is delayed reimbursements to schools. The private schools often receive reimbursements very late and even if they receive the amount is not sufficient to meet the total expenditure incurred by them. This is the ground reality, especially of the elite private schools which charge an exorbitant amount of fees but receive only a fraction of the amount from the state government in return for admitting RTE students. The schools in a state are not homogenous and the amount that they are paid by the government is far lower than the actual fee charged by them which disincentivizes them to provide admissions under section 12. Some schools charge a nominal amount as a fee while some charge a very high amount and this difference needs to be acknowledged by calculating the actual expenditure incurred by the school in educating a child. This process is quite tedious but it could be done with proper coordination among the local governing bodies. It was the very reason for impending dues for the last three years the private unaided schools in Maharashtra protested against admitting students under the RTE act. Around 40000 schools in Maharashtra did not receive the reimbursements and this ultimately resulted in a large number of children being denied admission to private schools. A similar situation was in Uttar Pradesh where the Association of Private Schools asserting their right to education fee reimbursements demanded the state government to release the reimbursements at the earliest.

The state governments often fail to update the data related to reimbursements resulting in disapproval of funds from the Project Approval Board (PAB) which results in further delay in the reimbursement. This vicious cycle continues and the ones who are adversely affected by this are the disadvantaged groups in society who are forced to pay for the books, uniforms, and other expenses for getting their child admitted to schools. Moreover, the problems of these children who are pushed from pillar to post for getting admission to private schools do not end here, as inside the schools they have to struggle and face discrimination and derogatory comments by those who are privileged. Not only the students but teachers also discriminate against them not allowing them to participate in school events or picnics etc. Thus, the intent of RTE remains thwarted and unfulfilled.

The RTE Act applies only to students belonging to the age group 6-14 which means it is for classes I-VIII. The question arises what would happen to these students after class VIII. The final option remains to get their child admitted to government schools where the quality of education is substandard. While a petition has been filed for extending RTE beyond class 8 but given the limited capacities of the State and the resource constraints it is unlikely that any action could be taken in this regard. However, Karnataka and Delhi have considered extending the applicability of RTE.

RTE indeed is an act with lofty aims that claim to achieve the goal of universalization of Elementary education, however, the above discussion reveals the RTE act is itself a flawed policy that has been framed without any pragmatic considerations. This is the reason that protests are erupting against the procedures and implementation of RTE. Whether it is in Odisha where the parents have complained of irregularities and non-transparency in RTE admissions or the state of Maharashtra where the private schools have complained of delayed reimbursements, neither the schools nor those belonging to the EWS and DG categories are satisfied with RTE which is a testimony to the failure of the Act.

### **Cases of Discrimination**

It is often argued that the structure of the caste system in India has weakened over the years due to rapid industrialization, urbanisation, the reforms undertaken by the government as well as the spread of education. Some scholars have even mentioned the decline of the caste system in India but several instances, especially in particular states of India like Rajasthan, Uttar Pradesh, and Bihar, reveal that the caste factor is still dominant in the education system in India. The lower castes in these regions have to face both economic and social barriers to gaining elementary education.

In December 2022<sup>19</sup>, in the district of Jaunpur in Uttar Pradesh a case was registered against a school teacher for making casteist comments and practising verbal abuse on children belonging to the Scheduled Caste (chamars). The parents of the students protested outside the school demanding action against him for abusing and misbehaving with the students. Such cases of upper caste teachers discriminating and ill-treating the lower caste students have been reported frequently in these states particularly. The discrimination against them begins the moment they enter the classrooms as in many schools students of lower castes are made to sit separately or at the last benches, drink water from separate pots as well as have to face casteist slurs and stereotypical comments from their teachers and peers. Not only the teachers but even the students of upper castes also

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<sup>19</sup> Hate Watch: Jaunpur school teachers abuse Dalit students, no complaint filed yet <https://cjp.org.in/hate-watch-jaunpur-school-teachers-abuse-dalit-students-no-complaint-filed-yet/>

physically and verbally harass students belonging to lower castes. The situation is even worse for students who belong to lower castes as well as the disabled. They are even more vulnerable to such discriminatory practices.

Most of the private unaided schools are of English medium while the RTE students getting admission in these schools are not well versed in English and prefer being taught in regional languages. According to a study by NCPCR (National Commission for Protection of Child Rights), one of the major reasons behind EWS and DG (Economically Weaker Sections and Disadvantaged Groups) students dropping out of school is communication in English. While preference for English education is the reason behind the rapid increase in enrolment in private schools, it is the very reason behind discrimination faced by RTE students from teachers and co-students.

Private schools are a key stakeholder in elementary education in India and this was the reason behind the incorporation of Article 12(1)(c) in the RTE Act but it is often found that private unaided schools do not comply with the provisions of this act and among the schools who admit students under the section are accused of discriminating the RTE students. According to certain surveys conducted in private schools, it was revealed that the RTE students were made to sit in separate classrooms, given less attention by the teachers, discouraged and punished severely by the school teachers and administration as well as their parents were humiliated and treated indifferently during the parent-teacher meetings. The section was implemented with the idea that diversity in private schools would enhance learning and development while reducing the divisions in society, but most of the private schools are of the view that this particular heterogeneous and socio-cultural diverse composition of the class negatively affects the performance of the teachers. Thus, the prejudice against RTE students makes them the victim of multiple discrimination in schools.

### **Inclusive education: Still a Work in Progress**

The ultimate and broader aim of the RTE Act is to establish an inclusive elementary education system that would provide access to good quality, affordable and meaningful education to all irrespective of any differences based on caste, class, gender, or any other. However, the applicability of RTE has been limited to the age group of 6-14 which should be expanded to 0-18 in order to make it more inclusive and all-encompassing. However, given the lack of funds and reluctance on the part of both the central and the state governments the implementation of RTE has not been done effectively. The non-compliance of private unaided schools to Section 12(1)(c) of the act and the closure of a large number of government schools as well as low-budget private schools has been

detrimental to the universalization of elementary education. The poor quality of teaching in government schools has led to an increase in the preference for private school education resulting in the closure of government schools (according to the UDISE+ report around 10000 government schools were closed in India in 2021) which provided education free of cost and increase in private unaided schools. Unfortunately, among these private unaided schools, the low-budget schools which charge a minimal fee of ₹200-600 are forced to shut down because of the strict input norms prescribed by the RTE Act. The private sector is making huge inroads in elementary education in India, both in the rural and urban areas and this is leading to the commercialization of education. Education is the public good and the right to education is a fundamental human right which implies that no person shall be left behind in having access to good quality education. In achieving the implementation of this right the State has to play the role of guarantor, the regulator as well as a facilitator of education which is inclusive of all. Private players are definitely key stakeholders in the education system but it needs to be regulated and monitored to a certain extent by the government. The need is to reaffirm the public good nature of elementary education which requires strengthening the government schools. However, the neglect of the government schools affects the lower castes and classes much more than the upper castes and classes and acts as a major deterrent for inclusive education in India.

## **Conclusion**

The RTE Act received much attention and applause from the public as well as several scholars for its laudable goal of achieving the universalization of elementary education. More than a decade has passed since the implementation of RTE and substantial improvements are visible. The enrolment rates have increased and gender disparity has been reduced but the concerns of quality of education still remain a major issue. A fundamental problem with RTE has been the lacunae in the provision of section 12(1)(c) as well as in its implementation which has adversely impacted the outcome of RTE. In fact, some intellectuals are of the opinion that RTE has brought certain disastrous effects on the schooling system in India. Firstly, the RTE was passed after six decades of independence which was in itself quite late, and in addition to this still, now several states are not adhering to RTE leading to further delays in its implementation. The lack of will on the part of the state government to implement RTE is clearly visible. Secondly, the implementation was not done in a planned way but in a haphazard manner with no proper feedback mechanism and involvement of actors from the ground level. Finally, the lack of funding for RTE as well as the lack of transparency in the utilisation of the available funds is also a paramount problem. Moreover, the use of indicators such as GER for computing

the performance of schools in India is also questionable. Besides, not much information is available on the education of trans-genders who are also an economically and socially backward minority community in India. Finally, education is a public good that is imperative for the empowerment and development of human beings and is crucial to the enhancement of human potential as well as economic growth. Hence, the government must not shirk its responsibility to ensure education for all, given the increasing role of private schools. Rather than shifting the blame on parents for preferring private schools as the reason behind the shutdown of a massive number of government schools, the government must focus on improving the government schooling system and restoring people's faith in it. Private schools are a key stakeholder in the elementary education system, but they are driven by profit motives, not welfare; hence, the retreat of the state from public education is not conducive to the universalization of elementary education.

Thus, even after more than 10 years of RTE, the condition of the public education system is not satisfactory. India was recently declared the most populous country in the world, has a large population of youth, and needs to focus on strengthening the education system if it wants to maximise its demographic dividend.

## **Recommendations**

The RTE Act was certainly a landmark step taken by the government of India to attain universalization of elementary education and the mandate for private schools to admit at least 25% of students in school from socially and economically backward sections was a bold move taken by the government. However, given the current condition of the public education system, it is clear the RTE Act has certain flaws as well as there exists a significant gap in the legislation and execution of the act which needs to be addressed. Some of the recommendations for making the RTE Act more effective in promoting inclusive education are:

1. The age group to which RTE Act applies ranges from 6-14, and it should be expanded to include people from the age group 0-18. Including more children under the ambit of this act is necessary for making the education system more inclusive and equitable. While this will certainly be a financial burden on the government given the resource constraints, the students who have received education till class VIII cannot certainly afford to study in the same private schools and have to get admitted to government schools. There is only one solution to this problem, strengthening the public education system and retrieving the faith in public schools as reliance on the private sector beyond a threshold limit is certainly not a remedy to the issues that stain the Indian Public education system.

2. Lack of awareness about the RTE Act, especially among the targeted groups is an issue that has largely been ignored. It has been found that people are often not aware that children are entitled to free and compulsory education under the RTE Act, they are particularly oblivious to the fact that 25% of seats are reserved in private schools for the EWS (Economically Weaker Sections) and disadvantaged groups. There is a need to spread awareness about the RTE Act and SMCs (School Management Committees) can play a significant role in this. However, the SMCs have been irregular in functioning and have not been provided with such power or funds to carry out their roles and responsibilities. Thus, there is a need to strengthen the SMCs
  - a. The District Education Officers must be entrusted with the responsibility of making the people aware of the provision of SMCs and making certain that their members are elected democratically and provided with adequate training and guidance, especially in formulating the School Development Plan (SDP). This can be done in collaboration with the NGOs or members of the local governing bodies, such as the panchayats. The possibilities of forming a network of SMCs in a district should also be explored in order to enhance the proactive role of the SMCs.
  - b. It should be made mandatory for the SMCs to hold meetings every month and send the minutes of the meetings to the District Education Officer. The latter must ensure that the meetings are held regularly and attended by the members, failing which the member must be replaced by another eligible candidate.
  - c. The RTE Act must be amended to provide punitive powers to the SMCs, such as taking action against teachers who discriminate against certain students or are mostly absent, rather than confining them only to an advisory role. This is necessary, especially in the case of private schools, to ensure that they comply with Section 12 (1)(c) of the Act.
  - d. The SMCs could also play an instrumental role in strengthening the feedback mechanism regarding the RTE implementation. They could play a proactive role in engaging with the community in monitoring the functioning of the schools and providing constructive feedback regarding the implementation of the Act as well as provide with certain innovative ideas or solutions to address the obstacles in its implementation.
3. The RTE Act though having lofty aims has not been able to achieve its goals because of the haphazard implementation of the policies. The Act has been implemented without providing any clarity about the roles and responsibilities of

those involved in the system. Neither the state governments nor the SMCs nor even the private unaided schools have been assigned clear-cut roles and responsibilities. The government must disseminate clear information regarding rules and procedures about the various facets of the provisions of the Act in order to resolve the ambiguities and gaps in the law.

- a. Maintenance of records of children (6-14 years) belonging to EWS and DG categories is imperative for the implementation of RTE. However, there is no clarity regarding the authority that is supposed to maintain the records. Hence it should be made mandatory for the state governments to form such a committee at the district level and specify who will be its members. The committee shall be entitled to conduct household surveys and ensure that the list of children is updated three months prior to the beginning of admissions under RTE.
  - b. The private schools are required to reserve 25% of seats for the children belonging to the weaker sections, however, these schools never provide data regarding the number of seats available under RTE or the designated areas from which the children can apply under RTE, to the public. The website of the ministry of education of every state should have dashboard mentioning the number of seats available under RTE as well as the number of children admitted under the RTE programme. The data on the seats available should also be made public by , especially through display boards installed outside schools since most of the parents are not well acquainted with the digital platform.
  - c. It has been found that taking advantage of weaker socio-economic backgrounds private schools often mislead parents and harass them during the admission process in several ways. The SMCs can play a crucial role here. Hence, it should be made mandatory for private schools to allow SMC members to assist the parents during the admission process. This could be done in collaboration with the NGOs and the CSOs.
4. Private schools are a key stakeholder in the elementary education system in India but too much reliance on the private sector might prove inadequate and inequitable to the task at hand. However, the decreasing number of government schools and the whopping increase in private schools over the years indicates the declining role of the government in enhancing the quality and quantity of government schools. While privatisation has been supported by several global and local forces, the need is to explore alternative paths to strengthen the public schooling system. One of the prime examples of this is the Kerala General

Education Protection Campaign which has successfully instilled confidence among parents about their public education system. Thus, the state governments have a major role to play in enhancing the standards of government schools.

5. The state governments have a major role to play in the implementation of the RTE Act and every state has its own state-specific problems. Hence, the states must be given certain autonomy in implementing the act. The funds must be allocated to the states considering their specific requirements and even the local bodies need to be provided with adequate powers and funds based on their area of expertise. The focus should be on decentralising roles while at the same time increasing their accountability in order to monitor their performance.
  - a. To ensure financial accountability, the states must develop a financial board for RTE where 65% of funding would be provided by the central government and 35% by the state government. The board will also scrutinize the applications for the claim of reimbursements by the state and sanction the amount accordingly. These accounts must be audited annually to maintain financial transparency, hence minimising corruption.
  - b. Given the regional disparities in education existing within the states, there is a need to identify those areas where the access to education among the people is abysmally low or the areas where the population of the disadvantaged groups is higher as compared to the other areas so that these regions could be provided with some extra support for educational upgradation. The categorization of such areas as Special Education Zones (similar to the idea of Special Economic Zones) will ensure that proper policy intervention and initiatives, such as increased expenditure on improving the infrastructure and quality of teaching, provision of vocational training, etc., are undertaken by the government to ensure that the socially and economically backward population in such marginalised areas are not deprived of education.
6. RTE certainly has the lofty aim of providing education to all in India but the glaring challenge faced in achieving this objective is in ensuring that education is accessible among those groups which are underprivileged and backward. Both social and economic factors influence this issue of accessibility.
  - a. Child labour is the major hindrance to the implementation of the RTE Act. The states with the highest number of child labourers, such as Uttar Pradesh in India, lag far behind in making education accessible to these marginalised sections. Moreover, the children of migrants are even more



vulnerable to becoming victims of the practice of child labour, as these migrants are often denied admission to schools on account of a lack of proper documentation (especially because the address on their Aadhar cards is of a state other than where they are currently residing). Thus, the government, especially the state government, must ensure that child labour is prohibited, cater to the special needs of the migrants by allowing them certain relaxations in the documentation process, and design certain special bridge courses for them to bring them up to par with other students in schools.

- b. In order to ensure that students from disadvantaged groups are not discriminated against in schools, the SMCs must be given punitive powers, and a monthly meeting should be held between the Block Education Officers and the parents of these students so the former can take the necessary actions to address their grievances, thereby ensuring that discrimination in schools does not become the reason behind these children dropping out of school.
  - c. Children belonging to disadvantaged groups become involved in the practice of child labour because of their financial condition. Thus, steps must be taken to incentivize education for these children, especially the girl child by providing them with certain monetary benefits for attending schools in the form of monthly allowances or scholarships. Such steps will prove instrumental in reducing the dropout rates of children and improving the accessibility of education among these children.
7. One of the most controversial sections of the RTE Act has been Section 12 which provides 25% reservation of seats for children belonging to the economically weaker sections and disadvantaged groups. While lack of awareness and clarity regarding the provision of this section is a major issue, the problem is being exacerbated because of the states being reluctant to implement this section. The private schools are not held accountable when they refuse to admit students under this section and the reason behind this non-compliance must be dealt with properly. Recently, the Department of Basic Education, Uttar Pradesh has decided to begin the process of revoking recognition from schools that do not comply with the rules set by the RTE Act.
8. The reimbursements to the private unaided schools have been another thorny issue in the implementation of this section. There is no system for tracking the reimbursements of expenditures to private schools, nor is there any standard

procedure for cost calculation. In order to solve this issue the central and state governments can take the help of the banks, coordinating with them to ensure that the schools are reimbursed on time. The banks can also be incorporated to provide loans at lower interest rates to certain schools for enhancing their infrastructure and other facilities in accordance with the standards of RTE.

9. In order to ensure better accountability towards RTE both the central and state governments should submit a progress report on the implementation of RTE, especially its financial aspects, every year. There should be performance audits being done by the CAG on a regular basis in order to oversee the discrepancies in the financial allocations for RTE and ensure optimum utilisation of the funds available.
10. The exemption of the minority schools to section 12 must be reconsidered. Mandating all minority schools to reserve seats for the EWS and disadvantaged groups would not be an infringement of their rights as enshrined in Article 30 of the Indian constitution as they are not forced to admit students from other communities. This would just require reserving seats for students from EWS and disadvantaged groups belonging to the minority community itself without diluting the minority nature of the institutions.
11. Effective implementation and monitoring of the Act require a proper Grievance Redressal Mechanism. Creation of the RTE Commission as an independent body that will not only have an advisory or recommendatory role similar to an ombudsperson but a proactive role having the ability to pass binding orders and take legal actions against the cases of non-compliance.
12. Education is not the sole responsibility of the central and state government. The NGOs and Civil Society Organisations have a major role to play in spreading awareness as well as helping in the monitoring and implementation of the act. Also, engagement with the NGOs and CSOs can prove fruitful in strengthening the feedback mechanism of RTE as these organisations, which mostly work at the ground level are well acquainted with the difficulties faced by those targeted under the RTE Act. Hence, the government must involve and engage with NGOs and CSOs to achieve the goal of universalization of elementary education.

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