

Right to Free and Compulsory Education

By **Diva Rai** - May 29, 2019



In this article, [Akanksha Yadav](#), a student at Dr. Ram Manohar Lohiya National Law University, gives an overview of the right to Free and Compulsory education available under the Constitution of India. The post also suggests solutions for obstacles that are coming in the way of implementation of the right to Free and Compulsory education.

What is the importance of Free and Compulsory education?

Education is the basic requirement for the overall development of a human being. A nation can never develop without its citizens being educated as citizens play a major role in the growth of the country.

In India, a large population does not know how to read and write their own name. According to the 2004 Global Education Report released by UNESCO, [India has got the largest number of illiterates with illiteracy rate being 34%](#). The reason for such a huge rate of illiteracy is poverty and unavailability of opportunities for the poor and needy who do not have access to education. The implementation of Free and Compulsory Education was the best initiative that could be given to the poor and needy children who are unable to get education due to the lack of resources.

Legal provisions and case laws dealing with right to Free and Compulsory Education in India

Article 45

Under the Constitution of India, Right to Education was not given as a fundamental right but was included as a DPSP under Part IV of the Constitution. Article 45 of the Constitution of India which was enacted after the independence, stated that the State shall provide early childhood care and Education to all the children below six years. In February 2010 giving effect to the 86th Amendment Act, the article was substituted. The substituted article states that for a period of 10 years, the State shall provide Free and Compulsory Education to all children below 14 years.

Mohini Jain v. State of Karnataka (1958)

This case has led to the foundation of the Right to Education. In this case, Mohini Jain, a medical student filed a petition, challenging the action of a private institute which was charging higher fees from students who did not get admitted to a government seat. One of the issues raised before the Supreme Court was whether the Right to Education is guaranteed to the people by the Indian Constitution or not.

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The Court in the absence of any Constitutional Provision for the Right to Education held that '*right to life and personal liberty*' under Article 21 includes '*Right to Education*' as education is required for the overall development of personality without which one would not be able to enjoy one's right to life. The purpose of the right to life is baseless without the Right to Education.

J.P. Unni Krishnan v. State of Andhra Pradesh (1993)

The decision given in the Mohini Jain's case was challenged in the Supreme Court.

The Supreme Court restricted the view given in Mohini Jain's case and held that every child has a fundamental Right to Free Education till 14 years of age after which it is limited by the State's economic capacity and development.

MC Mehta v. Union of India (1996)

Due to Unni Krishnan's decision, Article 45 of the Constitution of India has acquired the Status of Fundamental right. It is not necessary that every fundamental right is mentioned in Part-III of the chapter.

Article 21A (2002)

In 2002, the [86th Constitutional Amendment Act](#) was enacted which embarked the step towards Free and Compulsory Education in the Constitution of India. Following changes were brought by the amendment:

1. It inserted Article 21A which mandated the State to provide Free and Compulsory Education to children belonging to the age group of six to fourteen years.
2. There was substitution of Article 45 which provided that the State shall provide early care and education to all the children below 6 years.
3. It amended Article 51A by adding clause j to Article 51A which made it obligatory for a parent to provide education to his ward or child between 6 to 14 years.

The Right of Children to Free and Compulsory Education (RTE) Act, 2009

When did it come into force?

On 1st April 2010, the legislation came into force.

Why Right of Children to Free and Compulsory Education Act, 2009 was enacted?

Right of Children to Free and Compulsory Education Act, 2009 is the enabling legislation i.e. it was enacted to give effect to Article 21A of the Constitution.

What does Right of Children to Free and Compulsory Education Act, 2009 provide for?

Right of Children to Free and Compulsory Education Act, 2009 provides for:

- *Free and compulsory* full-time Elementary Education to a child who is below 14 years of age.
- A child's *admission to an appropriate class* depending on his/her age, *if a child has never been admitted to any school*. For keeping the child at par with other students, it also provides for special training.
- Duty and Responsibility of the Government, local authority and Parents for providing Free and Compulsory Education to a child.
- Norms and Standards for the school consisting capacity of children, pupil-teacher ratios, teaching hours.
- Prohibition on physical punishment, mental harassment, screening procedure for qualifying the admission, any kind of fees, private tuition by the teachers and running unrecognised schools.

What is meant by 'Free and Compulsory' education under the Right of Children to Free and Compulsory Education Act, 2009?

Right of Children to Free and Compulsory Education Act, 2009 specifies that:

- Compulsory education means the obligation of the government not only to provide Free and Elementary education to a child but also the responsibility of the Government to ensure compulsory attendance, admission and completion of elementary education of every child from 6-14 years.
- Free education means that no child shall be liable to pay any kind of fees or charges which might prevent the child from attending and finishing elementary school. There shall be no direct or indirect charges on the child or his/her parents for elementary education. It is the responsibility and duty of the government to incur all the expenses for providing the elementary education to a child.

What is meant by 'Elementary' education under the Right of Children to Free and Compulsory Education Act, 2009?

Clause 2(f) of the Act defines 'Elementary' education as the education given in a school from the first to the eighth class.

Are there any special provisions for a child with disabilities?

Yes, according to the proviso of Section 3 of the Act, a child with disabilities will be provided elementary education from the age group of 6-18 years according to the chapter V of the [Persons with Disabilities \(Equal Opportunities, Protection and Full Participation\) Act, 1996](#).

What mechanism has been provided if there is a violation of the Right of Children to Free and Compulsory Education Act, 2009?

- Under Section 13 of the Act, if any person or school:

1. Receives any kind of fees from the child or his guardian, will be subjected to a fine which may extend up to ten times of the fees demanded.
 2. Makes child go through a screening procedure for the admission will be liable to pay Rs. 25,000 on the first contravention and Rs 50,000 on every subsequent contravention.
- Under Chapter VI of the Right of Children to Free and Compulsory Education Act, 2009, a mechanism for the protection of rights of children has been provided. National Commission for Protection of Child Rights and the State Commission for Protection of Child Rights has been given power:
 1. To examine, review and provide recommendations to safeguard the rights and effective implementation of the Right of Children to Free and Compulsory Education Act, 2009.
 2. To inquire into complaints and have powers as that of Civil Courts to take necessary steps for the redressal of complaints.

Are government schools only responsible for providing Free and Compulsory Education under the Right of Children to Free and Compulsory Education Act, 2009?

No. Though major provisions have burdened the government schools with the responsibility of providing Free and Compulsory Education to the children, under Section 12(1)(c) of Right of Children to Free and Compulsory Education Act, 2009, private schools also share the responsibility. Private Schools are mandated to reserve 25% of the seats for disadvantaged children from its neighbourhood.

State of Tamil Nadu and Others v. K. Shyam Sunder and Others (2011)

A writ petition was filed for bringing a common curriculum and Uniform System of Education in the state of Tamil Nadu.

The Supreme Court read Article 21A along with Article 14 and 15 and affirmed the requirement of a common syllabus and curriculum. The Court held that "*under the Right to Education, right of a child need not be restricted to Free and Compulsory Education but right also extends to getting a quality education without any biases on the basis of economic, social and cultural background.*"

What are the provisions in other countries for the right to Free and Compulsory Education?

China	Germany	USA
All children from 6 to 19 years mandated to attend the school. Primary education: 6-9 years Secondary education: 12-18 years	All children from 6 to 16 years mandated to attend the school. Optional Kindergarten: 2-6 years Secondary education: 6-16 years	All children from 5 to 18 years mandated to attend the school. According to age group, a child has to attend: elementary, middle and high school.
Run by the ministry of education.	Run by the States and the federal government has a little role.	Run by both public and private schools.
Provided under Article 19, 24 and 26 of the Constitution.	Provided under Article 3,5,6,7,9,19,91b of the Constitution.	Provided under the provisions of the Human Rights Act.

What was the main goal behind the implementation of the Right to Free and Compulsory Education?

The main goal was to provide free and quality of Elementary Education to children by making it an obligation for the State and parents.

Up to what extent is the Government able to conquer the goals?

According to All India (rural report), there has been an increase in enrollment. Report facilitated by the NGO Pratham found out that there has been 96% enrollment for the age group from 6 to 14 years of age every year since 2010. The attendance patterns in the school vary from state to state. Attendance patterns based on a random visit are as follows according to the state:

85% and more	80% to 84%	75% to 79%	70% to 74%	60% to 69%	Below 60%
Gujarat, Maharashtra,	Himachal, Punjab,	J&K, Haryana, Rajasthan,	Assam, Meghalaya	Jharkhand, Tripura	UP, Bihar, West

Karnataka and Tamil Nadu	Uttarakhand, Kerala, Mizoram, Odisha, Andhra, Sikkim	Chattisgarh, Telangana, Arunachal, Nagaland			Bengal, Madhya Pradesh, Manipur
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What are the obstacles in achieving the goals successfully?

- *Quality education* is not being provided in the majority of the schools that provide Free and Compulsory Education.
- Though the government is providing Free and Compulsory Education, there are *other expenses* like transportation charges in case school is not near in the neighbourhood. Such expenses serve as a hurdle in the way of children's education.
- Many schools do not follow the stringent rule of *no screening procedure*. This leads poor children to a more disadvantageous position as they are unable to compete with other able students who have received every facility since their childhood.
- Even after there is a provision of *25% reservation* of seats in the private schools for poor students, much effect has not been given to this provision. Many schools don't provide admissions according to the prescribed quota. According to the [Annual Status Education Report-2018](#), there has been no overall increase in the stats of enrollment in private schools since the year 2014.
- Mainly, the focus is in the rural area and much attention is not provided for uplifting the poor and weaker children of the urban area. According to a study conducted by the Centre for Social Equity and Inclusion ([Marginalised Children and their Right to Education in Delhi: A study of five communities](#)), urban children face more deprivation from the access to education even in the presence of so many education provisions and schemes.

What can be done to overcome the obstacles?

- There is a difference between being literate and being educated. The government should focus on the quality of education so that there is better development of the overall personality of children in India. According to the Annual Status Education Report -2018, the majority of children who in Standard III or above require assistance in developing foundational skills in literacy and numeracy.

The government should formulate policies for testing whether students are able to apply whatever they are taught in the schools. The government should also try to give bonus and reward points to teachers to lure them to teach better, the government could try enacting competitive policies amongst the teaching staff.

- The government should focus on establishing more schools providing good education in each and every neighborhood. This will enable children to attend school without any fear of transportation charges.
- The general public should try to bring to notice if any school violates the no screening procedure for the admission procedure. The government should provide reward schemes for such a revelation to the general public. Such revelations would encourage notification of such schools which violate the rule of no screening procedure given under the Right to Free and Compulsory Education Act, 2009.
- The government should implement schemes and policies for ensuring that 25% of quota seats are given to the poor and weak children in private schools. The government should make a regulatory mechanism for keeping a check on private schools. For example, the government should take yearly reports and other major data of admission and education being provided under the 25% of quota and also check that such admissions are not on the basis of the screening procedure.
- The government needs to put an equal check upon the urban areas and put as many efforts as it tries to uplift the rural kids.

Conclusion

After so many years of the enactment of the RTE Act, the government has failed to achieve its goal of providing elementary education to each and every child of the age group between 6-14 years of age.

I've visited so many places which include both urban and rural places and have seen small children working everywhere or begging for making a livelihood. Such children who don't even have the basic requirements i.e. food, clothes and shelter, how can one suppose that they are availing the benefit of Free and Compulsory Elementary education. Though there are many welfare laws like the Juvenile Justice Act for such poor and needy children, the number of children that can be found begging on the roads or working for livelihood depicts the true picture. Until and unless the government does not ensure that other welfare legislation is being implemented in totality, the Right to Education cannot be given the full effect.

If you want to know more about the Right to Free and Compulsory Education visit <https://www.right-to-education.org/page/where-find-information>