

# **Children Have the Right to Free and Compulsory Elementary Education till they Complete it**

– *Ajay Pandey\**

The recently enacted Right of Children to Free and Compulsory Elementary Education Act, 2009 (the RTE Act), provides, *inter alia*, that children between six to fourteen years of age have the right to free and compulsory elementary education till they complete it and the commissions constituted under the Commissions for Protection of Child Rights Act, 2005 will entertain complaints arising out of any violations of the provisions of the RTE Act. This article brings to the fore some aspects of India's mandate to provide the right to free and compulsory elementary education to children. The central argument in the article is that though the RTE Act does have certain provisions that generate hope for a better scenario on the front of elementary education in India, the critical factor in realising these hopes is the effective implementation of these provisions, particularly at the grassroots. The article is divided into three parts. Part one discusses India's obligation relating to children's right to elementary education, as contained in the Constitution of India and in some human rights instruments and the reflection of the same through some national policies; part two discusses some provisions of the RTE Act; and finally, the third part comprises the conclusion.

## **I**

### **India's Obligation Relating to Children's Right to Elementary Education**

#### ***Constitutional Provisions***

In *Mohini Jain's* case,<sup>1</sup> the Supreme Court of India said that citizens have an absolute right to education which flows from Article 21 of the Constitution of India. Later, a larger bench of the Supreme Court, delivering its judgement in *Unni Krishnan's* case,<sup>2</sup> agreed with *Mohini Jain's* verdict as much as in holding that the right to education flows from Article 21 of the Constitution. However, the Court in *Unni Krishnan* clarified that the right to education means the right to elementary education of children up to fourteen years of age. In deciding the contents of the right to education, the Court referred to the Directive Principles of State Policy (DPSP). Article 45, one of the provisions amongst DPSP in the Constitution, as it existed then, provided for free and compulsory education to children up to fourteen years of age and the Court in *Unni Krishnan* decided accordingly.

Thus, post *Unnikrishnan*, till the eighty-sixth amendment in the Constitution,<sup>3</sup> the legal position with regard to right to education in India remained to mean that children up to fourteen years of age had the right to elementary education. The eighty-sixth amendment in the Constitution made the right to elementary education an explicit fundamental right, however, restricting it to children

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<sup>1</sup> *Mohini Jain v State of Karnataka* 1992 AIR (SC) 1858.

<sup>2</sup> *Unni Krishnan J.P. & ors. V State of Andhra Pradesh & ors.*, 1993 AIR (SC) 2178.

<sup>3</sup> The Constitution Amendment Act, 2002 (12 December, 2002).

falling between six to fourteen years of age. To this effect, the eighty sixth amendment act inserted Article 21 A in the Constitution. The said act also amended Article 45 of the Constitution by removing the entitlement to education of children above six years to fourteen years of age from this provision. In addition, the eighty-sixth amendment act inserted clause (k) in Article 51(A) providing for a fundamental duty of every citizen, who is a parent or a guardian of a child of six to fourteen years of age, to provide opportunities of education to the child.

Following is the text of some Articles of the Constitution concerning the entitlement of education to people:

Article 21A. Right to education. – The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.

Article 41. Right to work to education and to public assistance in certain cases. – The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in case of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

Article 45. Provision for early childhood care and education to children below the age of six years. – The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.<sup>4</sup>

Article 51A. – It shall be the duty of every citizen of India – ... (k) who is a parent or a guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.

### ***Human Rights Instruments***

The Universal Declaration of Human Rights (UDHR), provides that everyone has the right to education; education has to be free at least in the elementary and fundamental stages; and elementary education must be compulsory.<sup>5</sup> The International Covenant on Economic, Social and Cultural Rights (ICESCR) recognizes the right of everyone to education and to achieve the full realization of this right, it requires for primary education to be compulsory and be available free to all.<sup>6</sup> The CEDAW provides for adoption of appropriate means to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and to ensure the reduction of female drop-out rates.<sup>7</sup> The Convention on the Rights of the Child (CRC), recognizes the right of every child to education. To achieve this right, the CRC requires

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<sup>4</sup> Following is the text of Article 45 as it existed before the eighty-sixth amendment in the Constitution: "Provision for free and compulsory education for children. - The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years."

<sup>5</sup> UDHR Article 26(1).

<sup>6</sup> ICESCR Article 13.

<sup>7</sup> CEDAW, Article 10

that primary education to be made compulsory and available free to all. It also calls for measures to encourage regular attendance at schools and the reduction of drop-out rates. The CRC also requires that school discipline should be administered in a manner consistent with the child's human dignity.<sup>8</sup>

### ***Millennium Development Goals***

Millennium Development Goal 2, achievement of universal primary education, has set a target that by the year 2015 all children will complete a full course of primary schooling.<sup>9</sup>

### ***National Policy on Education, 1986 (as modified in 1992)***

The NPE, in the part on the essence and role of education, states, "In our national perception, education is essentially for all."<sup>10</sup> Then, in the part on national system of education, it provides that "the concept of a national system of education implies that up to a given level, all students, irrespective of caste, creed, location or sex, have access to education of a comparable quality."<sup>11</sup> In order to promote equality, the Policy states, it is necessary to provide not only for equal opportunity to all in access but also in the conditions for success.<sup>12</sup> Referring to holistic nature of child development, the Policy accords high priority to Early Childhood Care and Education and calls for suitable integration of these aspects with the Integrated Child Development Services programme.<sup>13</sup> It further calls for provision of day-care centres as a support service for universalisation of primary education. The Policy envisions day-care centres to enable girls engaged in taking care of siblings to attend school and to support working women belonging to poorer sections.<sup>14</sup>

The Policy emphasizes on three aspects of elementary education: "(i) universal access and enrolment; (ii) universal retention of children up to fourteen years of age; and (iii) a substantial improvement in the quality of education to enable all children to achieve essential levels of learning."<sup>15</sup> Exclusion of corporal punishment from the educational systems and adjustments in school timings and vacations to the convenience of children are some other provisions in the Policy aimed at protecting the interests of the child.<sup>16</sup>

Some aspects that the Policy highlights in its resolve<sup>17</sup> include:

- Highest priority to be given to solving the problem of children dropping out of school.
- Adoption of strategies based on micro-planning and applied at the grassroots to ensure retention of children at school.

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<sup>8</sup> CRC, Article 28.

<sup>9</sup> See <http://www.un.org/millenniumgoals/education.shtml> (accessed 10 December, 2009).

<sup>10</sup> NPE, para 2.1.

<sup>11</sup> Ibid., para 3.2

<sup>12</sup> Ibid., para 3.6.

<sup>13</sup> Ibid. para 5.2.

<sup>14</sup> Ibid.

<sup>15</sup> Ibid. para 5.5.

<sup>16</sup> Ibid., para 5.6.

<sup>17</sup> Ibid. para 5.12.

- Provision of free and compulsory education of a satisfactory quality to all children up to 14 years of age before the arrival of the twenty-first century.

### ***National Policy for Children, 1974***

The National Policy for Children requires the State to take steps to provide free and compulsory education to all children up to the age of 14 years.

### ***National Charter for Children, 2003***

The National Charter for Children, 2003 reiterates the commitment of the State to provide free and compulsory elementary education to children. The Charter calls for special incentives to be provided to children from disadvantaged social group to ensure not only that they are enrolled and retained in the school but also that they participate in schooling.<sup>18</sup> Another provision of the Charter requires the State to partner with the community in ensuring that all the educational institutions function efficiently and reach universal enrolment, universal retention, universal participation and universal achievement.<sup>19</sup> The State is required to ensure that education is child-oriented, meaningful and sensitive to the healthy development of the girl child and to children of varied cultural backgrounds.<sup>20</sup> It is also the duty of the State to ensure that school discipline and matters related to the same do not result in physical, mental, psychological harm or trauma to the child.<sup>21</sup>

## **II**

### **THE RTE ACT**

#### ***The Right to Free and Compulsory Education***

The purpose of the RTE Act is “to provide for free and compulsory education to all children of the age of six to fourteen years.”<sup>22</sup> According to the Act, it is the right of every child of the age of six to fourteen years to free and compulsory education in a neighbourhood school till s/he completes elementary education.<sup>23</sup> The Act provides that “no child shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing the elementary education.”<sup>24</sup> The Act defines elementary education to mean education from first class to eighth class.<sup>25</sup> “School” has been defined to mean “any recognised school imparting elementary education and includes- (i) a school established, owned or controlled by the appropriate Government or a local authority; (ii) an aided school receiving aid or grants to meet whole or part of its expenses from the appropriate Government or the local authority; (iii) a

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<sup>18</sup> National Charter for Children, section 7 (a).

<sup>19</sup> Ibid. section 7 (c).

<sup>20</sup> Ibid. section 7 (e).

<sup>21</sup> Ibid. section 7 (f).

<sup>22</sup> Right of Children to Free and Compulsory Education Act, 2009 (35 of 2009), the statement of purpose.

<sup>23</sup> RTE Act, *ibid.*, section 3(1).

<sup>24</sup> Ibid. section 3 (2).

<sup>25</sup> Ibid. section 2(f).

school belonging to specified category; and (iv) an unaided school, not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority.”<sup>26</sup>

### ***The Right to Free and Compulsory Education till the Completion of Elementary Education***

There is a special provision with regard to children not admitted to, or who have not completed, elementary education. Accordingly, “where a child above six years of age has not been admitted in any school or though admitted, could not complete his or her elementary education, then, he or she shall be admitted in a class appropriate to his or her age.”<sup>27</sup> In case “where a child is directly admitted in a class appropriate to his or her age, then, he or she shall, in order to be at par with others, have a right to receive special training.”<sup>28</sup> A child so admitted to elementary education shall be entitled to free education till completion of elementary education even after fourteen years.<sup>29</sup> To further strengthen this provision, the Act provides for non-expulsion of any child admitted in a school till the completion of elementary education.<sup>30</sup>

### ***Duties***

The Act casts certain duties on government, local authorities and parents. Thus, the Act requires the appropriate Government and the local authority to establish a school in the prescribed neighbourhood, where it is not so established, within a period of three years from the commencement of this Act.<sup>31</sup> “Appropriate government” means central government or state government<sup>32</sup> and “local authority” means Municipal Corporation or Panchayat<sup>33</sup> whatever is applicable in a given situation. The Act further requires both the appropriate government and local authority to provide free and compulsory elementary education to every child.<sup>34</sup> The term “compulsory education” has been defined to mean the obligation of the appropriate Government to provide free elementary education to every child of the prescribed age and to ensure compulsory admission, attendance and completion of elementary education by every such child.<sup>35</sup>

### ***Some Common Responsibilities of Appropriate Government and Local Authorities***

Some common responsibilities of ‘appropriate government’ and local authorities include the following:

- (i) Ensure availability of a neighbourhood school;
- (ii) Ensure and monitor admission, attendance and completion of elementary education by every child of prescribed age. The local authority has the specific responsibility to ensure the same for the children residing in its jurisdiction;

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<sup>26</sup> Ibid. section 2(n).

<sup>27</sup> Ibid. section 4.

<sup>28</sup> Ibid.

<sup>29</sup> Ibid.

<sup>30</sup> Ibid. section 16.

<sup>31</sup> Ibid. section 6.

<sup>32</sup> Ibid. section 2(a).

<sup>33</sup> Ibid. section 2(h).

<sup>34</sup> Ibid. sections 8(a) & 9(a).

<sup>35</sup> Ibid. section 8(a).

- (iii) Ensure that the child belonging to weaker section and disadvantaged group are not discriminated against and prevented from completing elementary education on any grounds;
- (iv) Provide infrastructure including school building, teaching staff and learning material; the local authority is required to provide leaning material in place of learning equipment;
- (v) Provide special training facility for children who need it;
- (vi) Ensure good quality elementary education conforming to the standards and norms specified in the Schedule;
- (vii) Ensure timely prescribing of curriculum and courses of study for elementary education; and
- (viii) Provide training facility for teachers.<sup>36</sup>

As far as financial responsibility is concerned, the Act provides that both the central government and state governments have concurrent responsibility for providing funds to meet the objectives of the Act.<sup>37</sup>

### ***Specific Responsibilities of Local Authority***

Following are the responsibilities specific to local authority:

- (a) Maintain records of children up to the age of fourteen years residing within its jurisdiction;
- (b) Ensure admission of children of migrant families;
- (c) Monitor functioning of schools within its jurisdiction; and
- (d) Decide the academic calendar.<sup>38</sup>

### ***Responsibilities of Schools***

All schools established, owned or controlled by the appropriate Government or a local authority shall provide free and compulsory elementary education to all children admitted in them.<sup>39</sup> The schools receiving aid or grants to meet whole or part of their expenses from the appropriate Government or a local authority are required to provide free and compulsory elementary education to such proportion of children admitted in them as their annual recurring aid or grants bears to their annual recurring expenses but in any case such proportion cannot be less than twenty-five percent.<sup>40</sup> Those schools who belong to a specified category and those who do not receive any kind of aid from the appropriate Government or a local authority to meet their expenses are required to admit in class I, at least twenty-five percent of the strength of that class, children belonging to weaker section and disadvantaged group and to provide free and compulsory elementary education to such children till they complete it.<sup>41</sup> A school not receiving any governmental aid is entitled to be reimbursed the expenditure that it will incur to meet the

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<sup>36</sup> Ibid. section 8 & 9.

<sup>37</sup> Ibid. section 7.

<sup>38</sup> Ibid. section 9.

<sup>39</sup> Ibid. section 12 (1) (a).

<sup>40</sup> Ibid. section 12 (1) (b).

<sup>41</sup> Ibid. section 12 (1) (c).

obligation of providing free and compulsory elementary education per child to the extent of the expenditure so incurred by the government on a child in the discharge of the similar obligation.<sup>42</sup>

No school or person will charge any capitation fee while admitting a child to the school and subject a parent or a guardian of such child to any screening procedure.<sup>43</sup> A school or person contravening the provision of not charging any capitation fee shall be punished with fine which may extend up to ten times of the capitation fee so charged.<sup>44</sup> A school or a person subjecting a parent or guardian to screening procedure shall be punished with fine which may extend to twenty-five thousand rupees for the first contravention and to fifty-thousand rupees for every subsequent contravention.<sup>45</sup> In some other responsibilities specified in the Act, no child is to be denied admission for lack of age proof;<sup>46</sup> no child is to be denied admission if the same is sought after the expiry of the period for such admissions;<sup>47</sup> and no child is to be subjected to physical punishment or mental harassment.<sup>48</sup>

Every parent or guardian has the duty to admit or get admitted his or her child or ward to an elementary education in the neighbourhood school.<sup>49</sup>

### ***School Management Committee***

Every school, excepting the schools not receiving any governmental aid, is required to constitute a School Management Committee (SMC) comprising of the elected representatives of the local authority, parents or guardians of children admitted to the school and teachers.<sup>50</sup> At least three fourth members of SMC have to be parents or guardians of children admitted to the concerned school.<sup>51</sup> The parents or guardians of children belonging to disadvantaged group or weaker section should be given proportionate representation in the SMC.<sup>52</sup> The functions of the SMC include monitoring the working of the school; preparing and recommending school development plan; and monitoring the utilization of the grants received from the appropriate Government or a local authority.<sup>53</sup>

### ***Ensuring Quality Education***

Striving to ensure some level of quality education, the Act requires the teachers to maintain regularity and punctuality in attending school and to conduct and complete the curriculum according to the norms and within specified time.<sup>54</sup> They are required to assess the learning ability of each child and to supplement additional instructions, if needed.<sup>55</sup> The teachers are also

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<sup>42</sup> Ibid. section 12 (2).

<sup>43</sup> Ibid. section 13 (1).

<sup>44</sup> Ibid. section 13 (2) (a).

<sup>45</sup> Ibid. section 13 (2) (b).

<sup>46</sup> Ibid. section 14 (2).

<sup>47</sup> Ibid. section 15.

<sup>48</sup> Ibid. section 17 (1).

<sup>49</sup> Ibid. section 10.

<sup>50</sup> Ibid. section 21 (1).

<sup>51</sup> Ibid.

<sup>52</sup> Ibid.

<sup>53</sup> Ibid. section 21 (2).

<sup>54</sup> Ibid. section 24 (a), (b) & (c).

<sup>55</sup> Ibid. section 24 (d).

required to hold regular meetings with the parents or guardians of children to apprise them of the performance of their child in the school.<sup>56</sup> The pupil-teacher ratio cannot exceed forty students per teacher.<sup>57</sup> No teacher is to be deployed for any non-educational purposes other than decennial population census, disaster relief duties or duties relating to elections.<sup>58</sup> In addition, the Act prohibits private tuition by teachers.<sup>59</sup>

### ***Effective Implementation of the Act and Redressal of Grievance***

The RTE Act requires the National Commission for Protection of Rights of Children (NCPCR) and State Commission for Protection of Rights of Children (SCPCR) to examine and review the safeguards for rights provided by the RTE Act and recommend measures for their effective implementation; to inquire into complaints relating to the child's right to free and compulsory education; and to take necessary steps as provided by the Commissions for Protection of Child Rights Act.<sup>60</sup> In the case of a state where SCPCR is not constituted, the Act says that the concerned state government may constitute an authority to perform the functions that are assigned to SCPCR under the RTE Act.<sup>61</sup>

For the redressal of any grievance relating to the implementation of the provisions of the RTE Act, the person having such grievance will give a written complaint to the local authority having jurisdiction.<sup>62</sup> Such a complaint must be decided by the concerned authority within a period of three months of the complaint so received.<sup>63</sup> Any appeal against such a decision can be made to the SCPCR or the authority so constituted by a State where SCPCR does not exist.<sup>64</sup>

However, the Commissions for Protection of Child Rights Act does not make it mandatory for the States to constitute SCPCR.<sup>65</sup> Also, the authority to be constituted by a State to discharge the functions assigned to SCPCR by the RTE Act, where the SCPCR has not been constituted, is not a mandatory body.<sup>66</sup> It means that effective implementation of the provisions of the RTE Act and redressal of grievance will remain aspirations difficult to fulfill in States which do not constitute the mechanism required for the same. This is an area which requires to be adequately strengthened to meet the objectives of the RTE Act.

There are two aspects which can address this concern. One, the RTE Act has a provision for the Central government to issue guidelines to State Governments for the implementation of the provisions of the Act.<sup>67</sup> Accordingly, the Central Government should issue appropriate guidelines to State Governments to ensure that they constitute either the SCPCR or the authority in question. In fact, this provision gives an opportunity to the Central Government to get the

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<sup>56</sup> Ibid. section 24 (e).

<sup>57</sup> Ibid. section 25 (1) and the Schedule.

<sup>58</sup> Ibid. section 27.

<sup>59</sup> Ibid. section 28.

<sup>60</sup> Ibid. section 31 (1).

<sup>61</sup> Ibid. section 31 (2).

<sup>62</sup> Ibid. section 32 (1).

<sup>63</sup> Ibid. section 32 (2).

<sup>64</sup> Ibid. section 32 (3).

<sup>65</sup> The Commissions for Protection of Child Rights Act, 2005, (No. 4 of 2006), see section 17 (1).

<sup>66</sup> The RTE Act, see section 31 (3).

<sup>67</sup> RTE Act, section 35 (1).



States to constitute SCPCR for a wider and more effective mechanism for the protection of child rights. Secondly, the NCPCR can exercise its authority under the Commissions for Protection of Child Rights Act by examining and reviewing the safeguards provided under the RTE Act for the protection of the child's right to education and in recommending measures for effective implementation of such safeguards.<sup>68</sup> Thus, the NCPCR can also recommend to State Governments to constitute SCPCR or the authority in question. Additionally, the NCPCR can inquire into violation of the child's right to education and recommend initiation of proceedings in such cases.<sup>69</sup> The NCPCR should exercise this provision especially and at least in matters relating to those States where neither SCPCR nor the authority in question is constituted.

### **III Conclusion**

The RTE Act, with the background of the Constitutional mandate to provide for the child's right to elementary education and other related national and international legal and policy commitments of India, represents a very strong regime to ensure that every child in India receives and completes free and compulsory elementary education. However, ineffective implementation of the laws, not the lack of them, is the main reason for the disconnect between the fundamental promises that the Constitution of India proclaims for every citizen and their grassroots reality. This disconnect can be addressed by achieving good governance through community participation. This concept is applicable for effective implementation of all enabling legislation including the RTE Act. The National Charter for Children provides that the State should involve the community in ensuring that the targets in respect of the child's elementary education are achieved.

The most basic requirement of community participation in respect of the RTE Act is that every parent or guardian must fulfill his/her duty to admit or cause to be admitted his or her child or ward to an elementary education in the neighbourhood school. The second basic step for the community is to ensure that all relevant children are enrolled in the school and the school functions according to the norms and provisions set by the RTE Act and other aspects of the legal regime relating to the provision of free and compulsory elementary education for children. Communities can invoke the authority of the NCPCR and other relevant bodies in ensuring effective implementation of these provisions. Many issues relating to ineffective implementation of such provisions can be settled through judicious use of the Right to Information Act, 2005. While doing so, it is to be kept in sight that "the quality of education is as important as enrolment;"<sup>70</sup> and that "girls still wait for equal primary school access."<sup>71</sup>

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<sup>68</sup> Supra note 65, see section 13 (1) (a).

<sup>69</sup> Ibid. see section 13 (1) (c).

<sup>70</sup> The Millenium Development Goals Report, United Nations, 2008, p. 14.

<sup>71</sup> Ibid., p. 16.