

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

### **1. When was the first demand for RTE made in the country?**

Gopala Krishna Gokhale moved in the Imperial Legislative Council on 18th march, 1910 for seeking provision of 'Free and Compulsory Primary Education' in India. This initiative must however be seen as part of the following sequence of events:

### **2. How was the original Article 45 of the Constitution arrived at?**

1946: Constituent assembly began its task

1947: Kher Committee set up to explore ways and means of achieving Universal Elementary Education within ten years at lesser cost.

1947: Constituent Assembly Subcommittee on Fundamental rights places free and compulsory education as a fundamental right of children.

### **3. Brief the demands of Compulsory education on list of Fundamental Rights**

"Clause 23- Every citizen is entitled as of ...right to free primary education and it shall be the duty of the State to provide within a period of ten years from the commencement of this Constitution for free and compulsory primary education for all children until they complete the age of fourteen years."

1947 (April): Advisory Committee of the Constituent Assembly rejects free and compulsory education as a fundamental right (costs being the reason).Sends clause to list of "non-justifiable fundamental rights" (later termed as 'Directive Principles of State Policy').

Article 45 of Directive principles of state policy accepted, "the state shall endeavour to provide within a period of 10years from the commencement of the constitution; for free and compulsory education for all children and till they complete the age of 14 years".

1949: Debate in Constituent Assembly Removes the First Line of 'Article 36'..."Every citizen is entitled as of right to free primary education and it shall be the duty of the State to.." and replaces it with "The State shall endeavour to.."

The Article 21 refers 'the citizens of this country have a fundamental right to

education'. This right is however, not an absolute right and his right to education is subjected to the limits of economic capacity and development of the state. The Article 21 A of the constitution inserted 'Right to Education' and focussed, 'the state shall provide free and compulsory education to all children of the age of 6 to 14 years'.

#### **4. What did the Supreme Court have to say?**

The Supreme Court in 1993 held free education until a child completes the age of 14 to be a right (Unnikrishnan and others Vs State of Andhra Pradesh and others) by stating that: "The citizens of this country have a fundamental right to education. The said right flows from Article 21. This right is, however, not an absolute right. Its content and parameters have to be determined in the light of Articles 45 and 41. In other words, every child/citizen of this country has a right to free education until he completes the age of fourteen years. Thereafter his right to education is subject to the limits of economic capacity and development of the State."

#### **5. What is the 86<sup>th</sup> Amendment?**

Spurred by the Unnikrishnan judgment and a public demand to enforce the right to education, successive governments from 1993 worked towards bringing a constitutional amendment to make education a fundamental right. That led to the 86th amendment in December 2002 which inserted the following articles in the Constitution:

1. Insertion of new article 21A- After article 21 of the Constitution, the following article shall be inserted, namely:- Right to education."21A. 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."
2. Substitution of new Article for Article 4.5 of the Constitution, the following shall be substituted, namely:-

Provision for early childhood care and education to children below the age of six years.  
'1\rticle 4.5. The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years."

3. Amendment of Article .51A- In article .51A of the Constitution, after clause (J), the following clause shall be added, namely:-

"(k) who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years."

**6. It is said that the 86th amendment diverted from the Unnikrishnan judgment; how?**

The original Article 4.5 of the Directive Principles had used the term 'up to 14 years' and the Unnikrishnan judgment said 'till he completes the age of 14years'. Both these definitions contain the age group 0-6 years. Article 21A restricted the age group from 6 to 14, thereby removing the 0-6 age group from the right; relegating it to the new article 4.5 of Directive Principles. The Unnikrishnan judgment had further observed that the right to education existed and would not be contingent upon the economic capacity of the state up to 14years of age. Article 21A said that it would come into force 'in such manner as the State may, by law, determine'. So it was made contingent on a law that the state may bring in. This Act is that law, and it took another eight years to come since the 86th amendment was passed. So it took seventeen years for the right to be enforced since the Unnikrishnan judgment, that too for the restricted age group of 6 to 14 years. It may be noted here that it was the Parliamentary Standing Committee on Education that recommended the age group 6 to 14 years for the eventual 86th constitutional amendment, paving the way for the restricted age group.

**7. What was the sequence of events leading to the 2009 Act?**

After the 86th amendment in December 2002 the following actions took place:

1. 2008: The Free and Compulsory Education For Children Bill, 2008 (NDA government)
2. 2004: The Free and Compulsory Education For Children Bill, 2004 (NDA government)
3. 2005: The Right to Education Bill, 2005 (June) (CABE Bill) (UPA I government)
4. 2005: The Right to Education Bill, 2005 (August) (UPA I government)+
5. 2006: Central legislation discarded. States advised to make their own Bills based on The Model Right to Education Bill, 2006 (UPA I government) 2008/9: Central legislation revived. The Right of Children to Free and Compulsory Bill, 2008, passed in Rajya Sabha and Lok Sabha, President's assent in August 2009.

However, the notification of the Act and the 86th amendment, issued on Feb 19,

2010 in the Gazette of India, stating that implementation will begin from April 1, 2010, eight months after the presidential assent. (UPA II government). Notice that the word 'Right' was missing in the first two drafts of the Bill and was used from the 2005 CAA bill onwards. The central legislation was dropped in 2006 in preference to state Legislations based on a token model bill draft, for the recurring 'lack of central resources' argument, but it was intense public pressure based on independent financial estimates that made it possible to revive and bring back the central legislation in 2008.

- The definition of 'free' that goes beyond tuition fees
- The 'compulsion' being on the governments rather than on Parents the stress on ending discrimination, and on inclusion.
- Prescribing quality principles for the teaching-learning process
- An external constitutional body for monitoring the Act Defining minimum norms and standards for the school An external constitutional body for monitoring the Act.
- Addressing the emotional, stress and anxiety issues of children

The Act is also momentous since it took over a hundred years to bring it in. If we take 1857 war as the milepost for the fight for India's independence, it took ninety years, up to 1947, for that to become a reality. But for the Right to Education, it has taken a decade longer, sixty two of those years being after the nation became independent. That gives the Act a very serious historic significance.

## **8. When has the RTE Act 2009, come into effect?**

The Right of children to free and compulsory Education Act-2009 (Central Act 35 of 2009) has come into effect from 1st April 2010.

## **9. What Right does the Act provide?**

Every child of the age 6 to 14 years shall have a right to free and compulsory admission, attendance and completion of education in a neighbourhood school. A child with disabilities shall also have the right to pursue free and compulsory elementary education up to age of 18 years.

**10. Who has issued guidelines for the implementation of the Act?**

School Education Department, Government of Tamil Nadu prepared guidelines on the lines of the model guidelines issued by Ministry of Human Resource Development.

**11. What are the areas covered under the Act? or Where does the Act extend to?**

The Act shall extend to the whole of India except the state of Jammu and Kashmir.

**12. What are the Rules issued by the State Government called?**

The Rules may be called the Tamil Nadu Right of children to free and Compulsory Education Rules, 2011. (G.O.(Ms.)173, dated 08.11.2011). It is issued based on the powers conferred by sub section (1) of section 38 of Right of children to free and compulsory education Act, 2009 (central Act. 35 of 2009), the Governor of Tamil Nadu makes the rules.

**13. What is the implication of 'free education'?**

'Free Education' is often meant to imply waiver of tuition fees, since the poor families are often not able to meet the other expenses needed for education. It includes textbooks, uniforms, transportation, support materials for disabled children (hearing aids, spectacles, Braille books, crutches) or even the library and laboratory fee.

**14. What is meant by compulsory Education?**

It refers to compulsory admission, attendance and completion of elementary education. The implication is that if a child in the age group 6 to 14 years is working at teashop, home etc., when the school is functioning, the government is violating his / her fundamental / right. It is the duty of State Government to ensure that all children attend school and complete their elementary education.

**15. What do you mean by 'Extent of School's responsibility for free and compulsory education?**

All Private Schools (the sub clause iii & iv of clause (n) of section 2) shall provide and admit in class I to the extent of at least 25% of the strength of that class, children belonging to weaker section and disadvantaged group in the neighbourhood and provide free and compulsory elementary education till its completion.

**16. What does the 'Appropriate Government' mean?**

Appropriate Government means the Central Government, State Government and Union Territory which establishes, own or control the functioning of schools.

**17. What does 'Capitation Fee' mean?**

'Capitation Fee' means any kind of donation or contribution or payment other than the fee notified by the school

**18. Who come under 'Child belonging to disadvantaged group'?**

As per G.O.(Ms) No.174, School Education (C2) Department, Government of Tamil Nadu (Notification-1). Dated 08.11.2011, child belonging to disadvantaged group means a child who is an orphan or affected with HIV or a transgender or a child of a scavenger in addition to the definition given in the Act i.e., A child belonging to SC, ST, Socially and educationally backward class or such other groups having disadvantage owing to social, cultural, economical, geographical, linguistic, gender or such other factor.

**19. Who come under 'child belonging to weaker section'?**

As per G.O.(Ms) No.174, School Education (C2) Department, Govt. of Tamil Nadu (Notification- III), dated. 08.11.2011, child belonging to weaker section means a child belonging to such parents or guardians whose annual income is lower than Rs.2,00,000/- (Rupees Two lakh only).

**20. What does 'Parent' mean?**

'Parent' means either the natural or step or adoptive father or mother of a child.

**21. What does 'guardian' mean?**

'Guardian' in relation to a child means, a person having the care and custody of that child and includes a natural guardian or guardian appointed or declared by a court or statute.

**22. Can a child be prevented to pursue schooling if it does not pay any fees or charges?**

No. 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 elementary education under the sub-section (i) of section 3 of the Act.

**23. Can a child above six years of age take claim to get admission in a school?**

Yes. Under the section 4 of the Act, a child above six years of age who 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 class appropriate to his or her age.

**24. What provision is available to children admitted in age-appropriate class?**

The children admitted in age-appropriate class have a right to receive special training. The special training shall be based on specially designed learning material approved by the academic authority.

**25. Who will identify the children requiring special training? Who will offer such special training to children?**

The School Management Committee shall identify the children requiring special training. The teachers working in the school or by teachers specially appointed for the purpose will offer the special training.

**26. Where will the Special Training be held?**

The special training will be held in the premises of the school or through classes organised in places identified by the Head Teacher.

**27. What is the duration of the Special Training?**

The duration of the special training shall be for a minimum period of three months which may be extended up to two years based on periodical assessment of learning progress of children.

**28. What is the purpose of organising special training to children?**

The purpose is to integrate the children with the rest of the class academically and emotionally.

**29. Who will provide special training to out of school children admitted in unaided school?**

The SSA will provide special training to out of school children and main stream them in age appropriate class.

**30. Can a child seek transfer to any other school?**

Yes. If there is no provision for completion of elementary education in a school a child shall have a right to seek transfer to any other school excluding the school specified in sub-clause (iii) and (iv) of clause (v) of section 2, for completing his or her elementary education. A child can seek transfer to any other school if he/she is required to move from one school to another either within a state or outside, for any reason, such child shall have a right to seek transfer to any other school, excluding the school specified in sub-clause (iii) and (iv) of clause (v) of section-2, for completing his or her elementary education.

**31. What are the documents which can be produced as proof of age of children for admission?**

- Birth certificate of child issued under the Births, Deaths and marriages Act, 1886 (Central Act VI of 1886) or
- Hospital or Auxiliary Nurse and Midwife (ANM) register record Anganwadi record.
- Declaration of the age of the child by the parent or guardian.

**32. How long the period of admission in a school is extended?**

The admission in a school is extended for six months from the date of commencement of the academic year.

**33. Is there any assistance given for a child admitted after the extended period?**

Yes. When a child is admitted in a school after the extended period, in an age-appropriate class he / she shall be eligible to complete studies with the help of special training (bridge course) as determined by the state Government.

**34. Can the delay in producing TC be a ground for either delaying or denying admission for a child in a school?**

*No*, delay in producing TC shall not be a ground for either delaying or denying admission for child in a school.

**35. Can a Head Master delay the issuance of TC to a child?**

*No*, Head Master cannot delay the issuance of T.C. In the absence of the Head Master, in-charge of the school must issue T.C. In the case of delay Head master *I* in-charge shall be liable for disciplinary action under the service rules applicable to him or her.

**36. What are the challenges in implementing RTE?**

The main challenges in implementing RTE 2009 are viz.

- Ensuring 25% reservation in admission of children who hail from EWS or disadvantaged groups at the entry level either in L.K.G. or Std I.
- Admission of children in age-appropriate classes and offering special training (Bridge course).
- Streamlining Recognition or Un-Aided schools.
- Establishing School Management committees with due representation from parents.

**37. Why parents can't be held responsible for sending children to schools?**

In a country like India where such a large majority of parents are poor, migrate for work, do not have support systems, putting compulsion on them, with punishment, would imply punishing them for being poor- which is not their choice. As the well-known educationist J.P.Naik once jocularly remarked, if parents are sent to jail for not sending their children to schools, there may be more parents in jails than children in schools.

**38. If parents don't send children to school, what should be done?**

Section ( 10)of the Act makes it the duty of the parents to ensure that their children go to schools, without prescribing any punishment. This implies that SMC

members, local authorities and community at large must persuade reluctant parents to fulfil their duty. For child labour and street children, the government would have to ensure that they are not compelled to work and provide schools for them, perhaps residential in many instances. Parents and communities who traditionally forbid their adolescent girls from going to school, or indulge in child marriage would have to be persuaded, or the child marriages act would need *to* be invoked against them. Civil society interventions would be crucial here.

**39 Does the Act target only weaker sections?**

*No*, it is universal. Any child who is a citizen of India, rich or poor; boy or girl; born to parents of any caste, religion or ethnicity shall have this right. If a rich parent decides to send his/her child to a school owned by the government/local authority, that child would also have a right to all the free entitlements. Only those children who are sent by their parents to a school that charges fees (private aided/unaided) will surrender their right, as per Section 8(a) of the Act, to free entitlements; they cannot claim reimbursement from the government for their educational expenditure (except for the obligatory 25% quota for children of disadvantaged groups and weaker sections to unaided schools).

**40. Have the disabled children been adequately addressed in the Act?**

There are deficiencies in the Act as it was passed in August 2009 in relation to children with disabilities. They should have been included in the definition of disadvantaged groups, but were inadvertently left out. The Act says that their education shall follow the provisions of the Disabilities Act 1996, but that Act has deficiencies in as much that it does not include mental disabilities. The central government has acknowledged these lacunae and promised to bring appropriate amendments in the Budget 2010 session of Parliament, as also to amend the Disabilities Act 1996 appropriately.

**41. Would home based education to the severely disabled come within the purview of the Act?**

No, As the Act stands, education would be inclusive for all categories of disability, including severe and profound. Attempts must be made by the state to educate differently-abled children in the formal schools.

**42. What about children not in schools right now?**

The Act, at Section 4 lays down that all children who are out of school, as never enrolled or drop outs (in the 6-14 age group), would have to be admitted in age-appropriate class in regular schools, and they would have a right to complete elementary education even after crossing age 14.

**43. Can children actually be made equal to age- appropriate class in two years?**

Pioneering work by groups like the MV Foundation has shown that it is indeed possible to do so. However certain flexibility could be used after the duration of special training. If a child after completing special training is 15 years old and should be in class 7 by the age-appropriateness criterion, but the teacher / school feels that it would be better for the child, in terms of coping, to be in class 6, they could advise the child / parents accordingly.

**44. What if children are admitted in Std I after age 6 and complete VIII Std after 14 years?**

They would have the right to get free education till they complete class 8, even if they exceed age 14. This would apply, for example, to a 15 year never enrolled child who may take 5 years to complete class VIII, up to the age of 18 years, or more.

## **DUTIES OF APPROPRIATE GOVERNMENT, LOCAL AUTHORITY AND PARENTS**

### **45 What are the duties of appropriate Government?**

- Provide free and compulsory elementary education to every child.
- Ensure availability of a neighbourhood school.
- Ensure the child belonging to weaker section and disadvantaged group and they are not discriminated against and prevented from pursuing and completing elementary education on any ground.
- Provide infrastructure, school building, teaching staff and learning materials.
- Provide special training facility.
- Ensure and monitor admission, attendance and completion of elementary education by every child.
- Ensure good quality elementary education conforming to norms and standards specified in the schedule.
- Provide training facility for teachers.

### **46. What do you mean by neighbourhood School?**

It refers to the area at limits of neighbourhood within which a school shall be established by the State Government. It is a distance of one kilometre in respect of children in classes I to V and it is of 5 kilometres in the respect of children in classes of VI to VIII.

### **47. What are the facilities made available by the State Government in the absence of neighbourhood school?**

When it is not possible to establish a school within the limits of neighbourhood prescribed by State Government (as of one km to Primary and 3Kms to Upper Primary), and children from small hamlets, the State Government shall make adequate arrangements for free transportation and residential facilities for providing elementary education.

**48. When will the State Government relax the limits of neighbourhood?**

The State Government shall locate the school and relax the limits of neighbourhood in places with difficult terrain; risk of landslides, or lack of proper roads and approach from their homes to the school.

**49. How do you locate the neighbourhood school?**

The local authority in consultation with Assistant Elementary Education Officer or District Education Officer shall locate the neighbourhood school through 'School Mapping'.

**50. Who will submit the proposal of financial assistance to MHRD for free and compulsory education?**

The State Government shall prepare annual estimates of capital and recurring expenditure for the implementation of provisions of the Act. It is also based on the existing level and standards of the education systems. The prepared proposal shall be submitted to MHRD.

**51. Who will bear RTE related expenses?**

A sharing pattern will be arrived at through mutual negotiations between the Central and State Governments. The sharing pattern will need to be reviewed and recommended 75:25 between the centre and the states.

**52. Who will maintain the records of Children?**

The Local Authority will maintain a record of all children in its jurisdiction through a household survey from their birth till they attain the age of 14 years and of children with disabilities till they attain the age of 18 years.

**53. What are the records to be maintained by Local Authority?**

- a) The records of every child to be maintained, include
- b) Name, Sex, Date of birth and place of birth.
- c) Name, Address and occupation of parent or guardian.
- d) School anganwadi centre that the child attends.
- e) Present address of the child.

- f) Class in which the child is studying and if the education is discontinued, the cause for such discontinuance.
- g) The child belonging to weaker section or disadvantaged group.

**54. How will children of migrant families receive education?**

There are two options. If children migrate with parents particularly small children, the schools in the migrated areas have to admit all children even if they cannot produce Transfer Certificates. Or if the parents demand that their children be given education in their native place while they are away for work, appropriate Government / Local Authorities shall have to ensure the availability of free residential schools for them.

**55. Whose responsibility is to ensure children particularly of the disadvantaged groups are not discriminated against?**

Legally it is the responsibility of State Government, Local Authorities and the schools monitored by the SMCS / Civil society groups and the National Commission for Protection of Child Rights and the State Commission for protection of Child Rights.

**56. Who will decide the academic calendar of the school?**

The Local Authority has the right to do so. This will open up the possibility of decentralized school calendars suitable for local conditions.

**57. What does pre-school education mean?**

It refers to 'readiness programme' to prepare children above the age of 3 years for elementary education.

The State Government will make necessary arrangements for providing free pre-school education.

For areas where there are no anganwadi or balwadi centres, efforts should be made to provide Free Pre-School Education in the neighbourhood school itself.

**58. On whom does 'compulsion' of providing free and quality education lie?**

As per Section 8 (explanation) (1) and (2), the state is compelled to provide free

education and ensure compulsory admission, attendance and completion of elementary education. The implication is that if a child in the age group 6-14 is working at a tea shop, agricultural field and so on, cooking at home or simply wandering around when the school is functioning, the government is violating his/her fundamental right. It is the government that must ensure that all children are attending school and complete elementary education. This violates both RTE Act, 2009 and child labour Act 1986.

**59. Can the norms and standards (schedule) be improved or changed?**

Yes, and that shall not require a parliamentary amendment. As per Section 20 it can be done by the central government through a notification. Most likely, the National Advisory Council shall be assigned the task of reviewing the schedule periodically.

**60. What kind of a school is envisioned under RTE Act, 2009?**

The Act lays down minimum norms and standards for all schools, government and private, through a mandatory schedule. This includes number of teaching days per year, number of teaching hours per day, number of rooms, availability of Teaching Learning Materials, library, toilets, safe drinking water, playground, kitchen for mid-day meals, Pupil Teacher Ratio, subject teachers in classes 6 to 8, part time art, work and physical instructors and so on. Governments and private managements have three years to upgrade their existing schools to these minimum norms, barring which they will not be allowed to operate. Governments have to provide such a neighbourhood school to all children within three years, i.e. by March 31, 2013. The prescribed norms are minimum, which implies that nothing stops state governments/managements to have higher norms than those listed in the schedule. In particular, if some schools already have higher norms, it does not imply that they reduce those norms to match the schedule.

**61. Why is 'neighbourhood school' not defined in the Act? Why leave it to Rules?**

To ensure that instead of a rigid national norm, the states define it in terms of their geographical, social and cultural realities. The Model Rule (4) indicates these realities, like difficult terrain, risk of landslides, floods, lack of roads, and in general, danger to young children where the 1km and 5 km norm could be reduced.

**62. What does 'Screening Procedure' mean?**

Any test or interview *I* interaction of the child or interview of parents for the purpose of admission is termed as screening procedure. Section 2(0) along with section 13 (2) (b) prohibits any of these screening procedures and calls for only random procedures to be used for admitting a child to school.

**63. What do you mean by 'Random Procedure'?**

Random Procedure implies that if the number of children applying to a school exceeds the available seats, an open lottery system or any other random selection process will be used to fill the seats.

**64. What is meant by 'Capitation fee'? Is it punishable?**

'Capitation fee' is the money or donation or material charged from the child or parent on admission other than tuition fee prescribed for the standards. No school or person shall collect any capitation fee while admitting a child and it is punishable . If any school receives capitation fee shall be punishable with fine which may extend to ten times the capitation fee charged .

**65 Can lack of proof of age be the basis of denying admission?**

In the absence of birth certificate issued under the Births, Deaths and marriages Registration Act 1886, any one of the following documents shall be deemed to be proof of age of the child.

1. Hospital or Auxiliary Nurse and Midwife register Record.
2. Anganwadi Record.
3. Declaration of age of the child by parent or guardian.

**66. Is it true that no child can be expelled or failed?**

Yes, no school, government or private can detain or expel any child at elementary stage. The Delhi High Court has already given a verdict in this regard on the basis of the Act.(April 7- 2010) against Saint Xavier's schools Delhi. (Sec G.O.MsNo.189, Para *I* Dated 12.07.2010).