

## IDEAL RTE: POSSIBLE OR NOT?

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Education is one of those rights which every child normally dreams of. Throughout the world nations have been trying to provide education as basic right to all its citizens. India took the step by introducing RTE i.e. Right to Education. It came up in the year 2005 meeting the international standards and thereby making RTE a fundamental right guaranteed under the Article 21-A 1 which talks about Right to Life and Liberty of the Constitution of India.

Nonetheless, India still faces many issues concerning education. The problems range from inefficient implementation to the problems regarding those who cannot afford the education.

There is also a lacuna as far as the student teacher ratio is considered. The writers of the paper will also try and discuss various other issues like – what were the original targets set by the framers of RTE and how far we have been able to achieve it. The necessity of primary education, the responsibility of state concerning the education after primary level and also how LGBTQ rights and RTE are associated have been tried to be discussed by the writers. This research paper intends to provide for the general explanation of the RTE and its background and then move onto the problems with RTE and then try to provide solutions to curb the problems and issues regarding the topic. The authors will also cover the scope of having the existence of the original and ideal RTE.

***Education is not aright but a dream that every child wants to live and it's our responsibility to fulfil their dream into reality.***

"We are committed to ensuring that all children, irrespective of gender and social category, have access to education. Education that enables them to acquire skills, knowledge, values and attitude necessary to become responsible and active citizens of India" <sup>1</sup>. With these words of the then Prime Minister doctor Manmohan Singh, RTE became a law making history in India. The law came in force

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<sup>1</sup>The Right to Education Act: A critique, Parth Shah(Thursday, April 1, 2010)  
<http://ajayshahblog.blogspot.in/2010/04/right-to-education-act-critique.html>

on 1 April 2010 by a speech by the then Prime Minister. This was the outcome of Article 45 which under the newly framed Constitution had stated that *“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>2</sup>

This peculiarity doesn't end here. The World Bank education specialist for India, Sam Carlson, quoted *“The RTE Act is the first legislation in the world that has put the responsibility of ensuring enrolment, attendance and completion of education of the child from the on the Government. It is the parents' responsibility to send the children to schools in the US and other countries.”*<sup>3</sup>

**A brief history of the Act & What exactly is RTE (Right to Education)** - It is an Act of the Parliament of India enacted on 4 August 2009, free and compulsory education for children in the age group of six to fourteen in India under Article 21A of the Indian Constitution, specifically, the Constitutional Amendment of 2002 that included the Article 21A in the Indian constitution made Education a fundamental Right. The RTE Act is a progressive piece of legislation that aims to take education to the masses and fill the gaps in the social system.

**Is the education really free or come with a hidden cost**-Law and its professionals are known to manipulate words and hence the word free was described aptly, In the act 'Free' means 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 'compulsory education' means the obligation of the appropriate state government to provide free elementary education and ensure compulsory admission, attendance and completion of elementary education to every child.<sup>4</sup>

For India being a country with a little higher illiteracy rates, the government decided to make a 6 year old student who has climbed up the ladder of grades and 6 year old who did not even see what a lecture in the school is to sit together and learn the same syllabus. With this will we really have an educated class or a certified class.? Children are admitted to the class according to their age and not

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<sup>2</sup>The Right to Education Act: A critique, Parth Shah (Thursday, April 1, 2010)  
<http://ajayshahblog.blogspot.in/2010/04/right-to-education-act-critique.htm>

<sup>3</sup>Mohamed Imranullh S, *Advantages and Disadvantages of RTE Act*, The Hindu, May 21, 2013, at Madhurai <http://www.thehindu.com/news/cities/Madurai/advantages-and-disadvantages-of-rte-act/article4735501.ece>

<sup>4</sup>Mohamed Imranullh S, *Advantages and Disadvantages of RTE Act*, The Hindu, May 21, 2013, at Madhurai <http://www.thehindu.com/news/cities/Madurai/advantages-and-disadvantages-of-rte-act/article4735501.ece>

their previous academic background within this scheme as a provision for special training of school drop-outs is provided so as to bring them on par with students of the same age. It requires all private schools(except the Private unaided schools run by religious and linguistic minority institutions) to reserve 25% of seats for the 'disadvantaged groups' and 'weaker sections' categories of children whereby 'child belonging to a disadvantaged group' is recognised as one belonging to a Scheduled Caste, Scheduled Tribe, socially and educationally backward class or such other group facing disadvantage owing to social, cultural, economic, geographical, linguistic, gender or other similar factors, that is there is also scholarships on various categories of reservation, for which the state will reimburse the cost as per Section 12 (2) of the RTE Act.<sup>5</sup>

The Act also provides a moon walk, or a water park ride which does not terminate or fail the students as it states that no child shall be held back, expelled, or required to pass a board examination until the completion of elementary education. It prohibits corporal punishment and it tries to incorporate the values of constitution and provisions of the DPSP (Directive principle of State policy). The Right to Education of persons with disabilities until 18 years of age is laid down under a separate legislation- the Persons with Disabilities Act that is Mentally and physically challenged children, entitled to free education in special schools, were included in the definition through an amendment last year. The act tries to create democracy as it tries to increase the participation of the parents of the beneficiaries the act also provided a clause of being managed by School Management Committees with 75 per cent parents and guardians as members, this however holds an exception for private unaided schools. On the basis of this Act, the government has framed subordinate legislation called model rules as guidelines to states for the implementation of the Act.<sup>6</sup>

**We have enough Law/Acts but the problem is in Implementation-** The RTE in black and white seems to make a strong assertion and an undeniable fact that the RTE Act would create an ideal situation as an answer to the problems of education in India. However, its implementation has been

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<sup>5</sup>ArihaSetalvad, *Is the Right to Education a reality for India's children?*, Business Standards, September 13, 2013, at Mumbai

[http://www.business-standard.com/article/economy-policy/is-the-right-to-education-a-reality-for-india-s-children-113091300395\\_1.html](http://www.business-standard.com/article/economy-policy/is-the-right-to-education-a-reality-for-india-s-children-113091300395_1.html)

<sup>6</sup>ArihaSetalvad, *Is the Right to Education a reality for India's children?*, Business Standards, September 13, 2013, at Mumbai

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undeniably faulty in reality. Loop holes in the implementation of the frame range from conceptualisation to prioritization. The Act also has articulated a grand scheme whereby within three years after beginning, only recognised institutions that will fulfil certain minimum infrastructure can impart school education in the country. The criteria's are spanning from infrastructure to other facilities such as, schools which have the minimum teaching personnel, at least one classroom per teacher and a playground will henceforth be allowed to function (under sections 18 and 19).<sup>7</sup>The progenitor of these kids are usually labourers who have shifted their bases from rural areas to urban city sides whereby they stay in slums either because of land constraint or costs of the land. The act expecting the school to have proper playgrounds in such scenario seems difficult.<sup>8</sup>If there is a decrease in the number of schools either due to non-compliance or other reasons, as it certainly will, due to the stringent infrastructure standards to be maintained, the nation's goal set of achieving universal literacy would suffer a colossal impediment. The RTE Act formulations are based not only on the unrealistic but also on the absurd premise that the recognised schools under the act would not only be able to provide an admission for the students from the schools which close down but also will be able to accommodate new or fresh admissions. The general consensus among the people and also the experts is that the government schools in India are not only overcrowded but also impart a very abominable standard of basic education. A study of 188 government non-primary schools revealed which 59 per cent of schools had no drinking water facility and 89 per cent no toilets. Today in India, between 35 million to 60 million children are not admitted to or not attending the schools. The reason for high number of dropouts is largely for reasons like poverty trodden family or the necessity to support the same.<sup>9</sup>The children aren't admitted to the school either due to no awareness for the same or due to low outcomes after investing time and money into government schools at the village and other almost unaccounted places. Various institutes and agencies believe which on all accounts a better shade of the government schools having reasonable standards and facilities are the Kendriya Vidyalayas and Navodaya Vidyalayas which the Act mentions. The act has brought them under the "specified category." Apparently, these schools have a policy whereby they are exempt from

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<sup>7</sup>ABDUL KHALIQ, *An education act with more wrongs than rights*, The Hindu, July 27, 2012

<http://www.thehindu.com/opinion/op-ed/an-education-act-with-more-wrongs-than-rights/article3687858.ece>

<sup>8</sup>ABDUL KHALIQ, *An education act with more wrongs than rights*, The Hindu, July 27, 2012

<http://www.thehindu.com/opinion/op-ed/an-education-act-with-more-wrongs-than-rights/article3687858.ece>

<sup>9</sup>ABDUL KHALIQ, *An education act with more wrongs than rights*, The Hindu, July 27, 2012

<http://www.thehindu.com/opinion/op-ed/an-education-act-with-more-wrongs-than-rights/article3687858.ece>

providing an admission to children who have seek transfer from schools which have no provision for completion of elementary education.<sup>10</sup>

The most ambiguous aspect of the RTE Act relates to the most crucial area of the entire system which this act hovers around that is Teaching, the quality of which, in fact, is the prime adverse denominator affecting the eradication of illiteracy in the whole of India. The emphasis on physical infrastructure in schools but not on teaching standards is reminiscent of the man who builds a lavish restaurant with cooks who cannot serve a basic delicacy.

The general statements as a part of the standards of teaching are by a way in which the Central government asserts it shall develop and enforce standards for training a teacher. The act has also ratified “relaxation in the minimum qualification required for appointment as a teacher” for up to five years.<sup>11</sup> This makes it very evident which the RTE Act accords little prominence to the teaching standards which have to be implemented at these schools, the foremost shortcoming in our educational system which needs to be catered to urgently on priority basis. For exemplification, The act under Section 4 directs which where a child is admitted to a class appropriate to his age, he shall, in order to be on a par with others students, would have a right to be trained that is given a special training to become competent.<sup>12</sup> But the biggest loop hole of this act and the deeply disturbing aspect highlighted by many school managements is which the RTE Act is giving absolute power to the Education Department and local bodies to make schools, by which this will become the ideal tool for large-scale, systemic corruption. It would be a scenario whereby the meritorious would have to comply under the table activities and the underdogs would get an unfair advantage over the rest if the officials appointed to check the same are indulging into such corrupt activities. The very reason one can believe this is because of the past open secrets and incidents which the nation has observed where even when there wasn't a specific law against the unrecognised institutions, the ubiquitous school inspectors and auditing officials had to be “appeased” by the innocent school authorities despite the school indulging in nothing illegal. Currently with the present provisions as mentioned above in the

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<sup>10</sup>ABDUL KHALIQ, *An education act with more wrongs than rights*, The Hindu, July 27, 2012

<http://www.thehindu.com/opinion/op-ed/an-education-act-with-more-wrongs-than-rights/article3687858.ece>

<sup>11</sup>ABDUL KHALIQ, *An education act with more wrongs than rights*, The Hindu, July 27, 2012

<http://www.thehindu.com/opinion/op-ed/an-education-act-with-more-wrongs-than-rights/article3687858.ece>

<sup>12</sup>ABDUL KHALIQ, *An education act with more wrongs than rights*, The Hindu, July 27, 2012

<http://www.thehindu.com/opinion/op-ed/an-education-act-with-more-wrongs-than-rights/article3687858.ece>

RTE Act in force, the inspectors and auditing officials will have a free rein to force the horses that is the school authorities to do their bidding — a grim portent for the future.

According to the census India is a home to 19% of the world's children population which then implies which it has the world's largest number of children<sup>13</sup>, News is that India is also accommodating one-third of the world's illiterate population. It's not a fact that the literacy rates have not improved, but rather it is a fact that the rate of the increase in the increase of the rates is rapidly slowing down. For juxtaposition, while total literacy rate grew from 1991 to 2001 which is it was 12.6%, while it has than declined to 9.21%. According to the recent surveys by the State Commission for Protection of Child Rights and UNICEF shows which the facilities and provisions of the education system has not improved much since 2009, which is when the act was first proposed.<sup>14</sup>

The Act attempts to do is contriving a Comprehensive Curriculum Evaluation (CCE), so as to ensure, tests are not the only mechanism through which a child's progress is tapped, but so as to scrutinize the holistic development of the child for an given academic year, keeping this as a very efficient method as the control rooms (parents) are alerted of any dangers or swaying away. However, because CCE is not understood properly by the officials is an axiomatic fact as in many schools, children are constantly promoted to a higher grade levels, regardless of whether there is a development or an overall progress so as to deal with the higher levels of academia or not which does require a building up of is and a moulding of the thought process of a child to cope with the same.

### **Does being a homosexual, take away our fundamental right?**

This is a pertinent question can gay students be gay? Not only India but other counties facing problems related to education. On the one hand country like ours facing problem in implementing RTE properly as education is still beyond the reach of many people and on the other hand country like US, able to provide education but there is lot of discrimination against "Gay" students. I am

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<sup>13</sup>ArihaSetalvad, *Is the Right to Education a reality for India's children?*, Business Standards, September 13, 2013, at Mumbai

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<sup>14</sup>ArihaSetalvad, *Is the Right to Education a reality for India's children?* Business Standards, September 13, 2013, at Mumbai

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purposely using this word “gay” here rather than “homosexual” because it is less clinical and more affirmative designation. The word “gay” often used to designate both gay and lesbian teenagers. This problem in US resulted in high drop-out of gay youth from school and it is further resulted that New York has its first separate public school for gay students. Many cases have been reported that gay youth are being harassed by the teacher of the school.<sup>15</sup>

And the Oxford also had to recognise a new and a specific term is there for such type of harassment, bullying that is- “Homophobic Bullying”.

Homophobic bullying means behaving or speaking in a way which make someone feel bullied because of their perceived sexuality.<sup>16</sup>

Teachers and administrators of public school prevents gay students from learning in many ways like – gay students are unfairly being harassed and punished, teachers and administration refuse to protect gay students from peer violence and these discriminations compelled gay students to primarily focus on their survival and in this kind of atmosphere focusing on education and learning become very difficult.<sup>17</sup> Recently a case has been reported about a gym teacher who continuously harassed a sixteen-year-old boy after knowing that he is gay and compelled him to attend girls’ gym. That boy complained about the problem to the principle of his school but no strict action was taken and as a result of all this the boy dropped out from the school.<sup>18</sup>

In long run these drop out students get involved in drugs and start earning through illegal means like-prostitution and smuggling.

One solution for this problem can be appointment of Gay Teacher in schools. Because after knowing that the teacher is also gay, this gives valuable support to the gay students. But when teachers hide their identity, due to fear that they will get fired if administration comes to know about that they are gay because under the current law school board can throw them out of their jobs upon discovering

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<sup>15</sup> Donna I. Denis & Ruth E. Harlow, *Gay youth and Right to Education*, Yale law and policy review.

<sup>16</sup> Bullying UK part of family life, <http://www.familylives.org.uk/about/contact-us/>

<sup>17</sup> Donna I. Denis & Ruth E. Harlow, *Gay youth and Right to Education*, Yale law and policy review.

<sup>18</sup> Interview with Joyce Hunter, Human Rights Commissioner of New York City, and Program Director, Institute for the Protection of Lesbian and Gay Youth, in New York city

their sexual orientation. And when students came to know that their teacher is gay and he has to lie about his identity this made students inferior.

With the above stated problems, gay students will also need to have a right to special training, so as to not get bullied and stand for what is their legitimate right, what is natural cannot be protested by mankind, the man needs to accept the nature in all her forms

Above we talk about discrimination based on choices and in this part we will talk about problems which are not in our control, which are by birth, here we are talking about retarded children either mentally or physically. Over the years children who are retarded have been excluded from proper education, is this legally justified? The provision of education as a fundamental right for all children include retarded also?<sup>19</sup>

In the Declaration on the Rights of Mentally Retarded Person, Proclaimed by General Assembly resolution 2856 (XXVI) of 20 December 1971. Seven rights have been mentioned for the protection of mentally retarded person.

Out of those seven right, the second right states that – “The mentally retarded person has a right to proper medical care and physical therapy and to such education, training, rehabilitation and guidance as will enable him to develop his ability and maximum potential.”<sup>20</sup>

The word education here is not particularly limited to make them literate but to provide them skills for their survival. In the absence of education and proper skill it will be difficult for retarded and handicapped to function properly in society and even to take care of themselves.

“Separate education for African-American is not equal education”.<sup>21</sup> In the similar way having separate schools for retarded students cannot be a solution.<sup>22</sup>

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<sup>19</sup> Jan Sheldon & James A. Sherman, *The Right to Education for the Retarded*.

<sup>20</sup> United Nation Human Rights, Office of the high Commissioner for Human Rights, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RightsOfMentallyRetardedPersons.aspx>

<sup>21</sup>In the case, *Brown v. Board of Education*, U.S. 483 (1954)

<sup>22</sup> Disability Justice, Right to Education, <http://disabilityjustice.org/right-to-education/>

It took nearly twenty years for a case especially for retarded children to come up. In 1971, a case settled before the U.S. District Court and court agreed to provide free public education for all children including mentally retarded ones.<sup>23</sup>

Another case resulted in the establishment of Constitutional right to education of all children with disabilities.<sup>24</sup>

In 1975, *Pennsylvania Association for Retarded Children* was codified on a national level as the Education for All Handicapped Children Act, now known as the Individuals with Disabilities Education Act.

### **What after primary education?**

Let us assume for a minute that India is able to implement RTE completely in the whole country properly. But what after primary education, will this Act lead to a better access to Secondary Education (class 9<sup>th</sup> to 12<sup>th</sup>). The answer is No. The act states nothing about the secondary education or to the children of the 14 to 18 age group. Providing such an incomplete education is useless, even though you are able to read and right but, is it sufficient to earn living? Government should again review the 86<sup>th</sup> Constitutional Amendment Act 2002 and Fundamental Right to free and compulsory education for all children until the age of eighteen years that is, till class 12<sup>th</sup>.

**Probable solutions for the problem-** An alternative can be completely publicly funded Common School System based on Neighborhood School (CSS-NS). Common School System simply means that is a “National School System based on the principles of social justice and equality, provide education of adequate quality to all the children in an equitable manner without discrimination on the basis of their caste, creed, language, gender, economic or ethnic background, location or disability (physical or mental) and it is applied in various categories of schools, like- government, local body or private, both aided and unaided. The CSS-NS is a heterogeneous classroom representing the diversity along with disparity existing in the neighborhood, only then everyone will show their interest in improving the government schools system even including the most powerful section of the

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<sup>23</sup>*Pennsylvania Association for Retarded Children (PARC) v. Commonwealth of Pennsylvania, 1971*

<sup>24</sup>*Mill v. Board of Education*, reached the Supreme Court on same principle as *Pennsylvania Association for Retarded Children (PARC)*.

society. CSS-NS can become a very powerful means of promoting solidarity in the working class, excluding all the various type of discriminations and this will lead to social transformation.

The education commission (1964-1966) had recommended this school system with a view to “bring the different social classes and groups together and thus promote the emergence of an egalitarian and integrated society.”<sup>25</sup> In today’s time, this system is widely used in many advanced economies of the world and these include G-8 countries also. But the situation, condition and scenario of India is not identical to other advanced economies of the world.

**Another solution can be Private-Public Partnership:-** As we know there are insufficient government schools in India. The Free and Compulsory education policy is effective on Government schools only, because the draft of RTE bill which has been approved by the cabinet, see government school as major vehicle for the implementation of RTE. We are investing 6% of our GDP in education budget but the question here is- Is it effective? The answer is NO. And it won’t be even in near future if we keep on using Government school as the only instrument. One better way to make RTE more effective can be by including “Low-cost private school” in education government policy.<sup>26</sup>

Education needs a holistic plan and approach, it is not only about how much educated one person is but also do all the persons have the right to be educated? Education is the means to livelihood and livelihood is the right to all. Education is everything one learns from normal academia to vocational courses. A child learning physics and a child learning to hold the gun and aim both are being educated one because he got the opportunity while the other did not and hence he had to make one. Education can facilitate the ends of crime which somewhere takes place due to helplessness and coercion.

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<sup>25</sup>Prof. Anil Sadgopal, *A COMPILATION OF NOTES ON COMMON SCHOOL SYSTEM*, Presented at the meeting of the Central Advisory Board of Education (CABE) held at New Delhi on 14-15 July 2005.

<sup>26</sup>Pankaj S Jain & Ravindra H Dholakia, *Feasibility of Implementation of right to education act*.