
TITLE: “THE ENFORCEABLE NATURE OF THE 2009 RIGHT TO EDUCATION ACT AND THE GUARANTEE OF FREE EDUCATION TO THE NEXT GENERATION OF CHILDREN IN INDIA”

Author: *Marcel Loyd MINKA*

Programmer Associate at the International Support Network on African Development (ISNAD), Centre for Petroleum, Energy Economics and Law, University of Ibadan, Nigeria

ABSTRACT:

The debate on the right to education was initiated in India by Mahatma JotiroaPhule more than 125 years ago when a substantial part of the memorandum presented by him to the Indian Education Commission in 1882.¹ At the National education conference held at Wardha (Maharashtra) in 1937, Mahatma Gandhi had to use all the moral powers at his command to persuade the misters of Education of the newly elected Congress governments of seven Indian provinces to give priority to Basic Education.² After the independence of India, a new constitution was drafted and article 45 of this constitution stated that the State shall endeavor to provide free and compulsory education to all children until they complete the age of fourteen years within a period of ten years from the commencement of this Constitution.³ On its side, the 86th Amendment Act of 2000 via its article 21A (Part III) seeks to make free and compulsory education a Fundamental Right for all children in the age group 6-14 years.⁴ In October, 2003 a first draft of the legislation on Free and Compulsory Education was made by the Indian parliament under the Children’s Bill of 2003 and this drafted work was put on the website in order to invite comments and suggestions from the public at large.⁵ The Right of Children to Free and Compulsory Education Act came into force from April 1, 2010.⁶ This was a historic day for the people of India, because from that day the Right to education will be accorded the same legal status as the right to life as provided by Article 21(A) of the Indian Constitution. According to this Right to Education Act, every child in the age group of 6-14 years will be provided 8 years of elementary education in an age appropriate classroom in the vicinity of his/her neighborhood. For the first time in the history of India it is made a right enforceable by pitting in article 21 of Chapter 3 of the Indian Constitution.⁷

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¹Anil Sadgopal [2010] *Right to Education vs. Right to Education Act*, Social Scientist Journal Article, Vol. 38, No. 9/12 (September-December 2010), pp. 19 (34 pages), Published By: Social Scientist. Available Online at <https://www.jstor.org/stable/27896288>

²Opcit; Anil Sadgopal [2010] *Right to Education vs. Right to Education Act*

³SrikantaMandal and Pranab Barman [2014] Attitude of Headmasters and Teachers towards the Right to Education Act (2009), India, IOSR Journal Of Humanities And Social Science (IOSR-JHSS), Volume 19, Issue 11, pp. 45 Ver. VII (Nov. 2014), Sidho-Kanho-Birsha University, Purulia, West Bengal, India.

⁴ Ibid; SrikantaMandal and Pranab Barman [2014], pp. 47

⁵Opcit; SrikantaMandal and Pranab Barman [2014], pp. 47

⁶ Ibid; pp. 48

⁷Article 21 of Chapter 3 of the Indian Constitution

The enforceable nature and character of this 2009 right to education act

In the year 2009, the estimated number of children whom did not go to school in India was eight million and these children were aged from 6 to 14 year-olds.⁸ This necessity to guarantee access to elementary education therefore led in 2009 to the adoption of the RTE Act. In this first part of our research paper we will look at the nature and character of the 2009 right to education act(A), and the recognition of the 2009 Right to Education Act by public and private education actors in India(B).

A-The nature and character of the 2009 right to education act

The 2009 RTE Act is made up of 7 chapters, 38 articles and a preamble. This Act arrives in India in an era where education becomes a priority and a necessity for all the Children, and this priority has been stated in several international treaties, implemented by many countries. With the adoption of the RTE Act, India comes out to be amongst the first-fifty Nations in the world to impose free and compulsory education to all the children between 6 to 14 years old. In India, the past progressive legislation on the right to education has been more of a social transformation and not a guarantee to access to education. The 2009 RTE Act therefore comes as a guarantee that all children in India (both the present and future children) will have access to at least elementary education.

Elementary Education is very important for the wellbeing of human beings. Elementary Education enlarges, enriches and imposes the individual's image of the future. A man without elementary education is no more than an animal.⁹ Education emancipates human beings and leads to liberation

⁸Sujata Bhan and Suzanne Rodricks [2012] *Indian Perspective on Child's Right to Education*, ELSEVIER, Procedia - Social and Behavioral Sciences, Volume 69, 24 December 2012, pp. 369.

⁹Sony Nupur [2007] *An Analytical Study of the Fundamental Right to Education in India*, the Journal of UGC-HRDC Nainital, Volume 11, Issue 3, pp. 4, Published online on the 9th of January 2018

from ignorance. The quality of elementary education of the child will determine his quality of life in that Nation. Both at National and international levels, efforts are being made to educate more and more people as education contributes in the development of the society which is consistent with the dignity of the human being.¹⁰ The founding Fathers of the Nation of India recognizing the importance and significance of this elementary education made it a constitutional goal and placed it under Chapter 4 of the Directive Principles of State Policy of the Constitution of India.¹¹ However, the Judiciary body of India made this right to education more possible when they placed the right to education as a fundamental right under article 21 of the constitution of India.¹² This article 21 of the Indian constitution provides free and compulsory education to all the children below the age of 14 in India.

A- The recognition of the 2009 Right to Education Act by public and private education actors in India

The Right to Education Act of 2009 mandates for all private schools to reserve 25% of their seats for children belonging to socially disadvantaged and economically weaker sections.¹³ This provision of the Act is aimed at boosting social inclusion to provide for a more just and equal nation.¹⁴ The recognition of this Right to Education Act by both Public and Private schools in India is very important because it determines appropriate policy implications with respect to ensuring proper

¹⁰Opcit; Sony Nupur [2007] *An Analytical Study of the Fundamental Right to Education in India*, pp. 4

¹¹Ibid; pp. 5

¹²Ibidem; pp. 5

¹³Youth Ki Awaaz [2015] *10 Things you need to know about the RTE Act*, 2nd June, 2015, Available Online at: <https://www.youthkiawaaz.com/2015/06/10-things-about-rte/>

¹⁴Section 12(1)(c) of the Right to Education (RTE) Act enforced in 2009

implementation of the Article 12(1)(c) of this Act in schools across the country.¹⁵

Another important element of this recognition is the establishment of Public-Private Partnerships (PPPs). As the programmatic idea of Public-Private Partnerships (PPPs) gains momentum internationally, educational PPPs has emerged as a key strategy in reducing educational and social inequities.¹⁶ One of the particular relevance to this study is Article 12(1)(c) of the Right to Education Act of India which mandates 25% entry level seats to be reserved for every children from Economically Weaker Sections (EWS) and Disadvantaged Groups (DG) in all private schools, reflecting the Government of India's acceptance of PPPs as a viable alternative for failing public schools.¹⁷ Evidence from the study suggests that this PPPS fails to deliver on the multiple goals outlined in the RTE Act of India and may not be in alignment with the human rights standards applicable to the right to education for all. Although controversial, this instruction given by the RTE Act to private schools is idealized as an equity measure for inclusion in and through education.¹⁸

The 2009 right to education act and the guarantee of elementary education to all the children in India

¹⁵Radhika Joshi [2020] *Can social integration in schools be mandated: Evidence from the Right to Education Act in India*, ELSEVIER, *International Journal of Educational Development*, Volume 77, September 2020, 102228

¹⁶SheetalGowda [2020] *Public-Private Partnerships in Education: A Vertical Case Study of the Right to Education Act (2009) India*, Graduate Doctoral Dissertation to obtain the qualification of Doctor of Philosophy (PhD) from the Department of Education/Leadership in Urban Schools of the University of Massachusetts Boston, Awarded on May 2020. First Advisor is Francine Menashy, Second Advisor is ZeenaZakharia, Third Advisor is Carol Anne Spreen. (this PhD dissertation document type is a Open Access Dissertation)

¹⁷Opcit; SheetalGowda [2020], pp. 104

¹⁸Michael Lafleur and PrachiSrivastava, children's accounts of labelling and stigmatization in private schools in delhi, india and the right to education act, published by Education Policy Analysis Archives (EPAA) Journal

India belongs to the comity of nations who have reaffirmed successively to global commitment towards the cause of children.¹⁹ The Right of Children to Free and Compulsory Education Act is one of the most revolutionary legal instruments being used by the Government of India, for guaranteeing a free and compulsory educational developmental platform to all children between 6-14 years of age, within the rights based framework, adapted by India with the ratification of the United Nation Convention for Child Rights (UNCRC).²⁰ In this second part of our research paper we will look at the guarantee of elementary education to all the children in India through the dispositions of the 2009 RTE act (A), and statistical demonstration of an increase in access to elementary education of Girls per 100 boys in Elementary schools in India selected between 2000 and 2014 (B).

A- the guarantee of elementary education to all the children in India through the dispositions of the 2009 right to education act

The necessity to receive basic education has become a great concern in India over the past years, and these concerns made the Indian government to adopt in 2009 the Right to education Act. This right to education act stands as a guarantee to every Indian child to attend elementary education. In order for us to better analyze this Right to education Act; we will define who is a child and what elementary education is. According to article 2(c) of the 2009 Right to Education Act, a child in India is defined as a *male or female being of the age of six to fourteen years*. And still in the same Act, Elementary education is defined in article 2(f) as *the education from first class to eighth class*. In this first section of the second part of our research paper, in the next paragraphs we will demonstrate how the

¹⁹Jannat Fatima Haider [2016] *Complaint Redressal and Awareness Generation: A two-pronged strategy for implementation for Right to Education Act, 2009 in India*, Research Journal of Educational Sciences, Vol. 4(7), pp. 11, August (2016), Published on the 31st July 2016, 9 pages.

²⁰ Ibid; pp.12

guarantee of children to elementary education is been assured by some dispositions of the Right to Education Act of 2009.

The right to free and compulsory education is the main debate explained and protected by this RTE, in the sense that it clearly states in article 3 paragraph 1 that *Every child of the age of six to fourteen years, including a child referred to in clause (d) or clause (e) of section 2, shall have the right to free and compulsory education in a neighborhood school till the completion of his or her elementary education.* This disposition of article 3 greatly encourages the present children and places a sign of hope for the elementary education of the next generation of children in India.

This 2009 RTE Act goes further in guaranteeing access to elementary education to all children not admitted to school and to children whom have not completed elementary education. This guarantee is clearly stated in article 3 of chapter of the RTE Act, where it states that *if 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: Provided that 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, in such manner, and within such time-limits, as may be prescribed.* This disposition is a great innovation in the arena of education rights because it guarantees education to non-admitted children and non-completion children in India. With this provision of article 3, we clearly understand that the right to education of the next generation of Indian Children is guarantee.

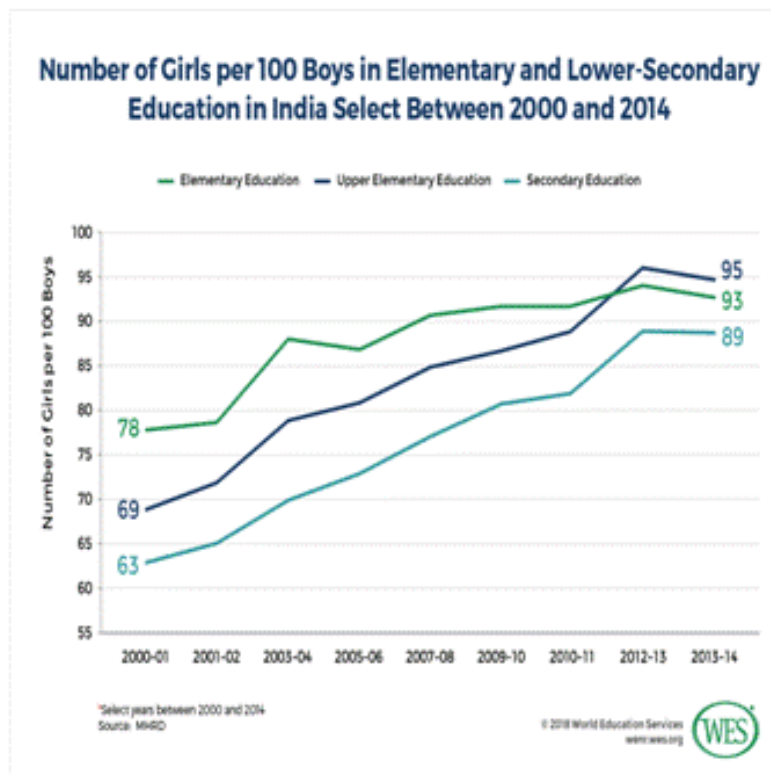
The creation and the establishment of schools in a country is an important public policy which helps to guarantee the right to education to all the children living in that country. So the Indian government

implemented this policy of school establishment and they lay down this policy in article 6 of the RTE Act. This article 6 stipulates that *For carrying out the provisions of this Act, the appropriate Government and the local authority shall establish, within such area or limits of neighborhood, as may be prescribed, a school, where it is not so established, within a period of three years from the commencement of this Act.*

B- Statistical demonstration of an increase in access to elementary education of Girls per 100 boys in Elementary schools in India selected between 2000 and 2014.

From the years 2000 to 2014 there has been an increase in the access of girls in elementary schools in India. As it can be seen in the diagram below 1.1, in the year 2000 to 2001, the percentage of girls per 100 boys in elementary school was 78 percent. In the years 2001 to 2002 the percentage of girls per 100 boys in elementary school moved to 79 percent. In the years 2003 to 2004 the percentage of girls per 100 boys in elementary school increased far to 87 percent. In the years 2005 to 2006 the percentage of girls per 100 boys in elementary school went down to 86 percent. In the years 2007 to 2008 the percentage of girls per 100 boys in elementary school increased to 91 percent. In the years 2009 to 2010 the percentage of girls per 100 boys in elementary school increased to 92 percent. In the years 2010 to 2011 the percentage of girls per 100 boys in elementary school increased to 93 percent. In the years 2012 to 2013 the percentage of girls per 100 boys in elementary school increased to 94 percent. And finally in the years 2013 to 2014 the percentage of girls per 100 boys in elementary school decreased a little bit to 93 percent compared to the previous year.

Diagram 1.1 on the percentage of girls per 100 boys in Elementary and Lower-Secondary Education in India Selected Between 2000 and 2014²¹



²¹The 2018 Chart on the percentage of girls per 100 boys in Elementary and Lower-Secondary Education in India Selected Between 2000 and 2014 from the World Education Services (WES)