

# Implementation of Section 12(1)(c) of the Right to Education Act, 2009 in Private Unaided Schools in India A Reality Check

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## Abstract

*The Right of Children to Free and Compulsory Education Act, 2009 became operative in India since 1st April 2010. The Act, for the first time, makes it legally binding on the nation to ensure free and compulsory elementary education for all children in the age group of 6–14 years. It spells out an array of provisions related to the responsibilities of the government, and other stakeholders, for protection of the right of elementary education of children. It contains a landmark provision — Section 12 (1) (c) — mandating private unaided schools to enrol at least 25 per cent of children in Classes I-VIII from the less privileged groups of society. This Section is primarily incorporated with the objective of equalising educational opportunities among all. The present study attempts to examine the implementation of this Section across India, explores the underlying factors that impede its implementation, and suggests ways to facilitate policy-making ahead.*

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## INTRODUCTION

In 2009, the Parliament of India enacted the Right of Children to Free and

Compulsory Education Act (RTE Act), in connection with the text embedded in the right to life in Article 21 of

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the Constitution of India. The newly inserted Article 21A mandates, “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”. Since 1st April 2010, this Act is applicable to all States and Union Territories (UTs) of India, and it is now a justifiable legal framework that puts the responsibility and liability on the State to ensure the right of quality elementary education to every child, based on the principles of equity and non-discrimination. More importantly, it ensures children’s right to education in such an environment which is free from fear, stress and anxiety (Government of India, 2010).

This Act heralds a new horizon in elementary education in India, as now the target of achieving educational objectives of children is enforceable by law (Sarin, 2015, p. 360). The Act contains a landmark provision— Section 12 (1) (c)— mandating private unaided schools to enrol at least 25 per cent of children in Classes I-VIII from disadvantaged groups of society. This Act has already completed one decade of its implementation. It is the time to have a reality check of the factual implementation of provision embedded in Section 12 (1) (c) of this Act. Only an in-depth study can help in gaining insights into the existing hurdles in the way of successful implementation of the said Section of the Act, and thereby provide future roadmaps to overcome the barriers.

#### **METHOD AND SOURCES OF DATA**

The present study applied secondary analysis of existing data. This

method involves in-depth analysis of existing data in a systematic way to understand an issue and find a plausible solution to a problem. The study has been carried out through a critical examination of both primary and secondary sources of data. It employed data, mainly taken from District Information System for Education (DISE), Unified District Information System for Education (U-DISE), and UDISE+ reports, unstarred questions and answers on education raised in the Lok Sabha, Government of India, journals, and newspaper reports, with special reference to the implementation of Section (12) (c) of the RTE Act, 2009.

#### **IMPLICATIONS OF SECTION 12 (1) (c) OF THE RTE ACT 2009**

Section 3 (1) in the RTE Act, 2009 mandates that “...every child of the age of six to fourteen years shall have the right to free and compulsory education in a neighbourhood school till the completion of his or her elementary education”. Notably, Section 12 (1) (c) stipulates that the schools “specified in sub-clauses (iii) and (iv) of clause (n) of Section 2 shall admit in Class I, to the extent of at least twenty-five percent 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” (Government of India, 2009, pp. 5-6). Here, schools in sub-clauses (iv) of clause (n) of Section 2 refers to “an unaided school, not

receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority” (ibid, p.2). The said Section further specifies conditions related to reimbursement of per child educational expenditure of those schools by the State: “The school specified in sub-clause (iv) of clause (n) of Section 2, providing free and compulsory elementary education as specified in clause (c) of sub-section (1) shall be reimbursed expenditure so incurred by it to the extent of per-child-expenditure incurred by the State, or the actual amount charged from the child, whichever is less, in such manner as may be prescribed” (ibid, p. 2).

Section 2 (c) defines a ‘child’ as “a male or female child of the age of six to fourteen years” (ibid, p. 2). Section 2 (d) and 2 (e) of the Act clarify: “Child belonging to disadvantaged group means a child with disability or a child belonging to the Scheduled Caste, the Scheduled Tribe, the socially and educationally backward class or such other group having disadvantage owing to social, cultural, economic, geographical, linguistic, gender or such other factors, as may be specified by the appropriate Government, by notification. Child belonging to weaker section means a child belonging to such parent or guardian whose annual income is lower than the minimum limit specified by the appropriate Government, by notification” (ibid, p. 2).

The RTE Act, accordingly, assigns the National Commission for Protection of Child Rights (NCPCR) and the State

Commission for Protection of Child Rights (SCPCR) in each State to perform the following functions:

- (a) “Examine and review the safeguards for rights provided by or under this Act and recommend measures for their effective implementation;
- (b) Inquire into complaints relating to child’s right to free and compulsory education; and
- (c) Take necessary steps as provided under sections 15 and 24 of the Commissions for Protection of Child Rights Act” (ibid: p. 9).

To make this provision a reality, States or UTs have issued appropriate rules and adopted different strategies. The NCPCR (ibid: p. 5) expounded the philosophy embedded in Section 12 (1) (c) that “the values of equality, social justice and democracy can be achieved only through the provision of inclusive elementary education to all”.

### **THE POST-RTE POLICY DEVELOPMENT**

At present, the various provisions of the RTE Act are being implemented through Samagra Shiksha since 2018–19. Samagra Shiksha is a holistic scheme for the school education sector, extending from pre-school to Class XII. It aims to ensure inclusive and equitable quality education at all levels of school education sector across India. The Shogun portal has been launched to create a repository of best practices in school education across the nation, and monitor online the implementation of the RTE Act 2009 (Government of India, 2019a).

Although meant to foster inclusion and achieve social justice, Section 12 (1) (c) of the RTE Act has been highly debated. The Society for Unaided Private Schools (SUPV)—an association of privately run schools—challenged the constitutionality of this Section on the basis that, imposing regulatory requirements on private schools would violate the right to practice any profession or occupation free from government interference under Article 19 of the Constitution, and the right of minority groups to establish and administer schools under Article 30.

However, in a 12 April 2012 verdict in the case of *Society for Unaided Private Schools of Rajasthan vs. Union of India and Another* (the Supreme Court of India, 2012), the Supreme Court of India upheld the constitutionality of Section 12 of the RTE Act, which mandates all schools, both state-funded and private, to accept 25 per cent intake of children from disadvantaged groups. However, the court held that the RTE Act could not entail minority schools to satisfy a 25 per cent quota.

This verdict affirms that the authority of the State to fulfil its obligations under the section can be extended to private unaided schools in public interest. The court verdict is an affirmative as well as a far-reaching step for integrating the students from Economically Weaker and Socially Disadvantaged Section Groups (EWS DGs) with ‘financially well-to-do pupils’ in private schools with a long-term objective of promoting a

‘socially inclusive society’ (Malvankar, 2018).

The latest policy development in the form of National Education Policy 2020 (NEP 2020) envisages that the extant 10+2 structure in school education will be replaced with a new pedagogical and curricular restructuring of 5+3+3+4, covering children of the age group of 3-18 years (Government of India, 2020a). The ongoing 10+2 structure does not cover children belonging to the age group of 3-6 as Class I begins at age six. Hence, this move of adding the pre-primary education with the first two years of primary schools (Class I and II) to ensure foundational literacy and numeracy ability by Class III, which is ‘an indispensable prerequisite for all future schooling and lifelong learning programme’ (ibid, p. 8) is a pragmatic reform, provision of access and opportunity to all children of the country to obtain quality holistic education—including vocational education—from pre-school to Grade 12 (ibid, p. 10).

### **PRESENT STATUS OF COMPLIANCE OF SECTION 12 (1) (c)**

Since the implementation of the RTE Act in April 2010, many attempts have been taken by both the Central and State or UT governments to ensure the mandate about the access of children from the EWS DGs to private schools. However, the implementation of this Section has been a concern across States or UTs. For implementation of this Section, the respective States or UTs are required to come up with a

notification about the disadvantaged groups and weaker sections, per-child cost, and start admissions in private unaided schools as per the procedure laid down by them. The Union Ministry of Education requested States or UTs to ensure compliance with the provisions of this Section in the private unaided schools. Further, the ministry, in various meetings like State Education Secretaries Conference, State or Regional workshops, Project Approval Board (PAB) meetings, has been advising the States or UTs to accentuate the implementation of this Section (Government of India, 2020b). However, as of 2016–17, the annual number of seats in India reserved for students from EWSDGs in unaided private schools was 2.18 million, down from 2.27 million in 2015–16.

The total fill-rate of such reserved seats from 2014–17 in India as per U-DISE 2013–14, 2014–15, 2015–16, and 2016–17 data was only 23 per cent (Verma et al., 2018). However, there are massive State or UT-wise variations regarding filling-up of these seats. For instance, in 2013–14, Madhya Pradesh had a fill rate of 88.2 per cent while Andhra Pradesh ended up with only 0.21 per cent (Sarin et al., 2017). Nationally, in 2012–13, about 387823 students got admitted in private unaided schools under this Section, and the figure rose to 4135015 in 2018–19 (Dharlwal and John, 2019; Khetarpal, 2020). Fig. 1 shows the total number of children admitted or studying under Section 12 (1) (c), nationally from 2012–13 to 2019–20.

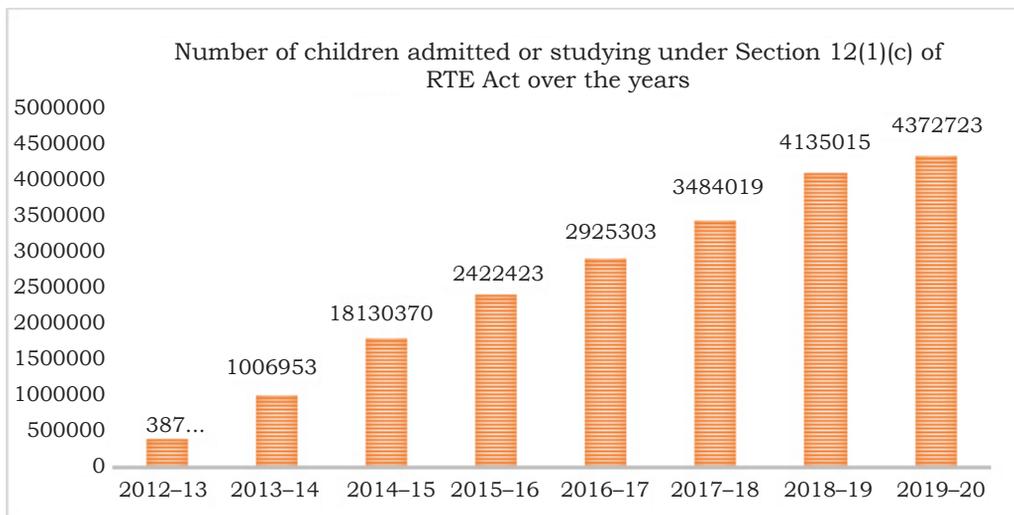


Fig. 1: Number of Children Admitted in India under Section 12 (1) (c) during 2012–13 to 2019–20  
Sources: Dharlwal and John, 2019; Khetarpal, 2020; Government of India, 2020b

It is interesting to note that Andhra Pradesh, Arunachal Pradesh, D and N Haveli, Daman and Diu, Goa, Haryana, Jammu and Kashmir, Kerala, Ladakh, Manipur, Meghalaya, Mizoram, Nagaland, Puducherry, Punjab, Sikkim, Telangana, Tripura, West Bengal—these 19 States or UTs recorded no student availing the opportunity of Section 12 (1) (c) of the RTE Act. Lakshadweep has no private unaided school. Fig. 2 shows the trend of students admitted under this Section in the remaining 17 States or UTs.

Regarding provision for reimbursement by the government, of the expenditure incurred by the private unaided schools, in admitting and teaching these children till January 2019, only 15 States or UTs could

notify about the per-pupil expenditure (PPE) to the Central government, a mandatory requirement under RTE Act, to claim reimbursement (Government of India, 2019c). Even the methodology to determine PPE is not uniform across the States or UTs. For example, in Maharashtra, the methodology specifies that the amount spent by the government (State, Central or any other authority with government affiliations) on elementary education will be divided by total number of children enrolled in schools (excluding unaided private schools) to determine PPE (Government of Maharashtra, 2011). On the other hand, Tamil Nadu has an additional provision of using the fees fixed by the Regulation of Collection of Fee Committee as the PPE, if it is

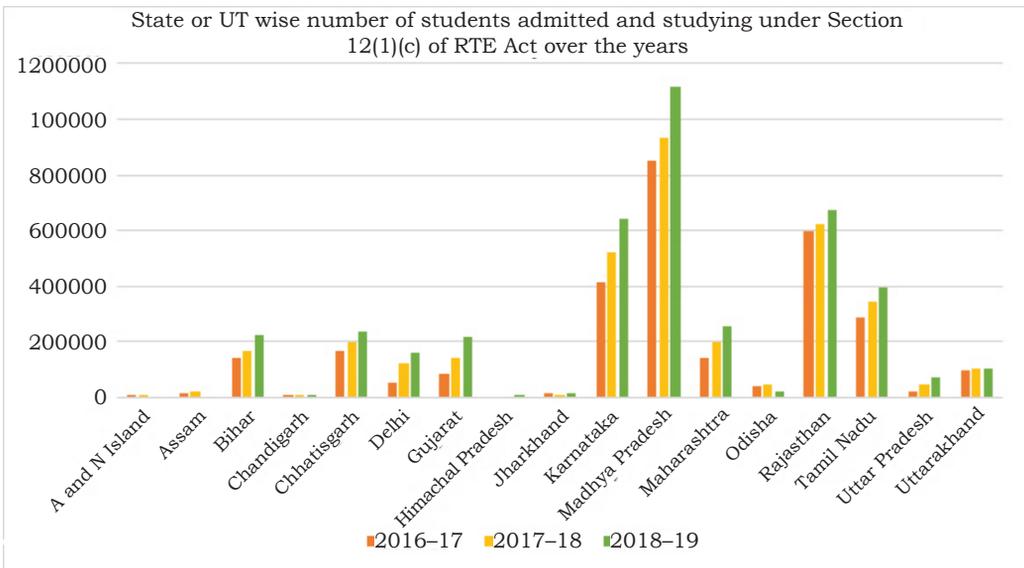


Fig. 2. State or UT wise number of Children Admitted under Section 12 (1) (c) during 2016–17 to 2018–19  
Sources: Dharwal and John, 2019; Government of India, 2020b

less than the amount based on the expenditure formula (Government of Tamil Nadu, 2011). Again, the annual reimbursement for EWSDG students, studying in private schools, varies in States or UTs according to PPE of the State or UT governments concerned. For instance, in Tamil Nadu, the PPE was over ₹28000 annually, while in Uttar Pradesh, it was just INR 5400 (Kingdon and Muzammil, 2018). Another point is that the state governments of Uttar Pradesh, Himachal Pradesh and Bihar have not revised PPE since 2014–15 (*ibid*), raising doubts over the accuracy of the reimbursement-expenditure claimed by them. Issues within the annual budget and expenditure plan have further resulted in many private unaided schools, not receiving reimbursements for years (The Tribune, 18 December 2021). States do not get the amount demanded from the Central government on time (Centre for Civil Society, 2019).

In 2018–19, only 57 per cent of ₹233900 million, asked by the States or UTs towards reimbursement, was released by the PAB of the Union Education Ministry. In 2019–20, just 63.78 per cent of ₹172530 million demanded by 12 States or UTs for reimbursement was sanctioned by the PAB (Kumar et al., 2018). This means that reimbursement for over 0.31 million students in these 12 States or UTs was not approved by the Central government (*ibid*). Reasons for non-approval of such reimbursement include: States or UTs

not submitting relevant documents, proposal for anticipated expenditure rather than actual expenditure; and reimbursement claimed for admission at pre-primary level, etc.

### **BOTTLENECKS IN IMPLEMENTATION OF SECTION 12 (1) (c)**

Existing research studies on implementation experiences of the States towards Section 12(1)(c) display considerable gaps. Though this Section of the RTE Act is undoubtedly important for ensuring social equity, its implementation has been hindered by varied forms of stumbling blocks. Some of them may be noted below:

- As soon as the Section was constitutionalised in the Supreme Court of India in 2012, it became obligatory for private schools to obey the mandates of the Section, private schools felt that their autonomy would be diluted by this Section. Some of them pointed out “how will they ensure quality if their student intake is ‘diluted’ by the have-nots?” (Bedadur, 2011, p. 61). Obviously, there was “palpable hostility towards the inclusion of the socially disadvantaged children in private schools” (Velaskar, 2010, p. 84).
- Teachers in private schools feel that children of EWSDGs come from ‘less than ideal’ home environment (Jha et al., 2013) and thus, will be unable to cope with the environment of private schools in terms of social adjustment, educational support at home and pace of learning.

- Principals' forum of these schools is apprehensive that the social distance that separates EWSDG children from the rest of the pupils at school is socially unbridgeable. Many principals suggest that separate afternoon or parallel school sessions for the disadvantaged children are better solutions (Sarin and Gupta, 2014, p. 70).
- Most schools reluctantly admit EWSDG children, but are not committed to bringing fundamental changes in attitudes or pedagogical aspects that may foster social inclusion.
- An underling concern how long these students would remain in school and whether they would complete elementary education there. As they get promoted to higher grades, they would require greater financial and academic support from home. There is apprehension that their families may not be able to provide this support (Sarangapani et al., 2014).
- Iyer (2018) also found that this Section was not being efficiently structured to assist children from disadvantaged backgrounds. To the eligible disadvantaged and marginalised children, there is limited awareness of and information about the section.
- Moreover, high application costs, lack of online access and literacy of the poor, fears of discrimination, and higher hidden school costs such as transportation cost, cost of uniforms and books, etc., are also preventing them from availing themselves of the opportunity of getting admitted in private schools (Dongre et al., 2018 Srivastava and Noronha, 2016). Mehendale et al. (2015) examined the status of implementation of this section in Bengaluru and Delhi, and found lack of awareness among the EWSDGs about this section, and specifically the procedures for claiming benefits under the provision.
- Private schools have also expressed concern whether they will receive timely and full per-child subsidies from the government (Iyer and Counihan, 2018). Some of the schools were dissatisfied with the reimbursed amounts, and claimed that they had to pay for the children themselves, often by hiking the fees of the general students. The middle and lower-income unaided schools are most compliant with this Section, but unfortunately, these schools do not get reimbursement from the government on time, which in turn, discourages these schools to comply with the mandates of the Section (Bhowmick, 2019).
- Srivastava and Noronha (2014), in their study in Delhi, identified four ways in which private schools misinterpreted or evaded implementation of Section 12 (1) (c): (i) admitting existing students under free-seats provision. (ii) operating separate shifts for

students, admitted under this provision. (iii) narrowly interpreting fee-free to tuition fee only without other costs. and (iv) evading implementation.

- Some researchers (Ashley et al., 2020; Sarin et al., 2017; Kainth, 2014; Sarangapani et al., 2014) found that implementation of the said Section has been hindered by reluctance, and evasion by private schools.
- Sometimes well-to-do applicants forge documents to gain undue advantage of free seats in private unaided schools. This leads to wealthier ineligible children, occupying the seats reserved for socio-economically disadvantaged children (Sucharita and Sujatha, 2018).
- Maithreyi and Sriprakash (2018) argued that the provision of reservation under this Section is “in effect only open to a small proportion of parents with the social and cultural capital to work through the complex and often corrupt bureaucratic processes of allocation”.

### **THE FUTURE ROADMAP**

As per Section 7 (1) of the RTE Act 2009, the Central government and the State or UT governments have concurrent responsibility for providing funds for implementing the provisions of this Act. Samagra Shiksha scheme provides for support to the States and UTs for implementation of the RTE Act in the manner, as prescribed, including

reimbursement of expenditure, incurred for 25 per cent admissions in private unaided schools under this Section by the States or UTs. This provision has been effective since 2014–15. To bridge the extant gaps in realising the provisions laid down in this Section, the following steps may be taken:

- Each State or UT must notify about the admission of the EWSDG students and per-child cost in private unaided schools as per the procedure laid down by them, in keeping with the spirit of Section 12 (1) (c) of the RTE Act.
- A massive awareness programme for making the guardians aware of the provisions of this Section, especially among the socially and economically backward people is the need of the hour.
- State or UT and Central governments should devise a separate mechanism to scrutinise the implementation of Section 12 (1) (c) of the RTE Act across India to ensure timely fee reimbursements. Direct transfer of per-child cost to parents rather than reimbursements to schools may create greater accountability and transparency around fund release.
- Better transparency and political pressure for fee reimbursement by the governments should be emphasised on.
- The system of biometric identity tracking is needed to ensure that a

single child is not enrolled in more than one private unaided school.

- Lottery-based admission in Class I private unaided schools should be introduced to prevent the schools from cherry-picking students based on higher social and financial ground.
- To solve the issues of discrimination and violation of child rights, the poor families must have access to grievance redressal mechanisms. The NCPCR has been empowered by the Act to redress such grievances. Such grievance redressal mechanism should be accessible to all the stakeholders of school education sector and grievances should be resolved timely.
- Recognition should be revoked from the private unaided schools which maintain non-compliance of this Section.
- Regulatory regime for public and private schools needs to be modified. The policy reforms envisioned in the NEP 2020 remarkably include elimination of 'asymmetry between the regulatory approaches to public and private schools'. The Department of School Education, which is the apex state-level body in school education, will be responsible for eliminating conflict of interests between them. Best practices of private schools will be documented, shared, and institutionalised in public schools, and vice versa, where possible (Government of India, 2020, p.

30). 'Public-spirited private/ philanthropic schools' should be encouraged, yet at the same time, 'the commercialisation and economic exploitation of parents by many for-profit private schools' must be restrained.

- The policy reforms in school education envisaged by the NEP 2020 are pragmatic in overhauling its landscape. If the RTE Act can be amended to cover at least pre-school within the ambit of free and compulsory education, the objectives of the Act and the policy principles will be smoothly maintained.

### **CONCLUSION**

Section 12 (1) (c) of the RTE Act is historic in the sense that it recognises the difficulties in accessing educational opportunities by the vulnerable sections of society, and strives to create pathways to accessing such opportunities for children. It is perhaps the most revolutionary yet most neglected provision in the RTE Act 2009. It mandates 25 per cent compulsory enrolment for children, belonging to EWSDGs, but fails to actualise it in reality. It provides reimbursement only of tuition fees of poor children, enrolled in private schools at government rate, but not other hidden add-on fees (Gosai, 2009). Moreover, there is a wide gap between the whole cost of per-child education in private schools and the actual reimbursement made by the government. This deficit is definitely passed on to the rest of the

pupils from well-to-do families, as the private schools have no bar on raising fees from the fee-paying 75 per cent students. However, the execution of the Section should be handled in a better way. Stricter rules for enforcement of this Section, an RTE cell and help centre, availability of alternative modes of application for admission besides online mode, and active participation of officials and private stakeholders are

highly necessitated for implementation of the Section in letter and spirit. The child rights provisions embedded in the Section 12 (1) (c) in particular, and the overall provisions enshrined in RTE Act, 2009 in general, need public awareness, and calls for an amendment to bring pedagogical and curricular restructuring of 5+3+3+4, articulated in the NEP 2020, under justifiable rights.

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