

## Conclusions of the Supreme Court Judgment dated 12 April 2012 upholding and clarifying various provisions of “**The Right of Children to Free and Compulsory Education Act, 2009**”

On 12 April 2012, the Supreme Court of India delivered a Judgment upholding and clarifying provisions of the “**The Right of Children to Free and Compulsory Education Act, 2009**” also called the Right to Education Act (RTE Act). Since the judgment is over 150 pages, this document aims attempt to summarize the conclusions of the Judgment and provide only relevant portions of the Indian Constitution and RTE Act together for easy reading.

*This is not a legal interpretation, this document aims to simply and makes it easy for School Principal's and other members of the education community to understand the judgment and it's implications.*

It is also likely that a review petition may be filed in the Supreme Court leading to changes in the Judgment, however, till that happens, the current judgment applies.

I will appreciate comments and feedback on the issue, which will further enlighten me on the subject. Please submit all your comments at the following link - <http://www.anil.biz/?p=384>

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**Points 1 to 13 are conclusions of the Supreme Court Judgment.**

**I have added italics text below the conclusions. Para's within quotes are reproduced from the Constitution or the RTE Act.**

1. Article 21A casts an obligation on the State to provide free and compulsory education to children of the age of 6 to 14 years and not on unaided non-minority and minority educational institutions.

*Article 21A of the constitution reads:*

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

2. Rights of children to free and compulsory education guaranteed under Article 21A and RTE Act can be enforced against the schools defined under Section 2(n) of the Act, except unaided minority and non-minority schools not receiving any kind of aid or grants to meet their expenses from the appropriate governments or local authorities.

*Section 2(n) of the Act reads:*

“ 2. In this Act, unless the context otherwise requires, -

(n) “school” means any recognized school imparting elementary education and includes –

(i) a school established, owned or controlled by the appropriate Government or a local authority;

(ii) an aided school receiving aid or grants to meet whole or part of its expenses from the appropriate Government or the local authority;

(iii) a school belonging to specified category; and

(iv) an unaided school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority;”

3. Section 12(1)(c) is read down so far as unaided non-minority and minority educational institutions are concerned, holding that it can be given effect to only on the principles of voluntariness, autonomy and consensus and not on compulsion or threat of non- recognition or non-affiliation.

*Section 12(1)(c) of the Act reads:*

“ 12(1) For the purposes of this Act, a school, -

(c) 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 per cent 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;

Provided further that where a school specified in clause (n) of Section 2 imparts pre-school education, the provisions of clauses (a) to (c) shall apply for admission to such pre-school education”

4. No distinction or difference can be drawn between unaided minority and non-minority schools with regard to appropriation of quota by the State or its reservation policy under Section 12(1)(c) of the Act. Such an appropriation of seats can also not be held to be a regulatory measure in the interest of the minority within the meaning of Article 30(1) or a reasonable restriction within the meaning of Article 19(6) of the Constitution.

*Article 30(1) of the Constitution reads:*

**“30. Right of minorities to establish and administer educational institutions.—**

Article 19 - All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

(1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.”

*Article 19 (6) of the Constitution reads:*

**“Right to Freedom**

**19. Protection of certain rights regarding freedom of speech, etc.—**

(1) All citizens shall have the right –

(a) to freedom of speech and expression; (b) to assemble peaceably and without arms; (c) to form associations or unions; (d) to move freely throughout the territory of India; (e) to reside and settle in any part of the territory of India; and (g) to practise any profession, or to carry on any occupation, trade or business.

(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,—

(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or

(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.

5. The Appropriate Government and local authority have to establish neighbourhood schools as provided in Section 6 read with Sections 8 and 9, within the time limit prescribed in the Statute.

*Since these sections are long and the entire text is in the RTE Act, I'm reproducing here only relevant portions:*

**Duties of appropriate Government, Local Authority and Parents**

6. For carrying out the provisions of this Act, the appropriate Government and the local authority shall establish, within such area or limits of neighbourhood, as maybe prescribed, a school, where it is not so established, within a period of three years from the commencement of this Act.

**8. The appropriate Government shall –**

- (a) Provide free and compulsory elementary education to every child
- (b) ensure availability of a neighbourhood school as specified in section 6;
- (c) .... (i)

**9. Every local authority shall –**

- (a) Provide free and compulsory elementary education to every child
- (b) ensure availability of a neighbourhood school as specified in section 6;
- (c) ....(m)

6. Duty imposed on parents or guardians under Section 10 is directory in nature and it is open to them to admit their children in the schools of their choice, not invariably in the neighbourhood schools, subject to availability of seats and meeting their own expenses.

*Section 10 of the Act reads:*

“ It shall be the duty of every parent or guardian to admit or cause to be admitted his or her child or ward, as the case may be, to an elementary education in the neighbourhood school.”

7. Sections 4, 10, 14, 15 and 16 are held to be directory in their content and application. The concerned authorities shall exercise such powers in consonance with the directions/guidelines laid down by the Central Government in that behalf.

*While Sections 4,10,14 and 15 can be read in the act, Section 16 of the Act reads:*

“No child admitted in a school shall be held back in any class or expelled from school till the completion of elementary education”

8. The provisions of Section 21 of the Act, as provided, would not be applicable to the schools covered under sub-Section (iv) of clause (n) of Section 2. They shall also not be applicable to minority institutions, whether aided or unaided.

*Section 21 of the RTE Act reads*

“ 21(1) A School, other than a school specified in sub-clause (iv) of clause (n) of Section 2, shall constitute a School Management Committee consisting of the elected representatives of the local authority, parents or guardians of children admitted in such school and teachers:

Provided that at least three-fourth of members of such Committee shall be parents or guardians:

Provided further that proportionate representation shall be given to the parents or guardians of children belonging to disadvantaged group and weaker section:

Provided also that fifty per cent of Members of such Committee shall be women.

(2) The School Management Committee shall perform the following functions, namely:-

- a. Monitor the working of the school
- b. Prepare and recommend school development plan
- c. Monitor the utilization of the grants received from the appropriate Government or local authority or any other source; and
- d. Perform such other functions as may be prescribed”

9. In exercise of the powers conferred upon the appropriate Government under Section 38 of the RTE Act, the Government shall frame rules for carrying out the purposes of this Act and in particular, the matters stated under sub-Section (2) of Section 38 of the RTE Act.

*Sub-Section (2) of Section 38 of the Act has 18 points allowing the Government to make rules for carrying out the provisions of the RTE Act.*

10. The directions, guidelines and rules shall be framed by the Central Government, appropriate Government and/or such other competent authority under the provisions of the RTE Act, as expeditiously as possible and, in any case, not later than six months from the date of pronouncement of this judgment.

11. All the State Governments which have not constituted the State Advisory Council in terms of Section 34 of the RTE Act shall so constitute the Council within three months from today. The Council so constituted shall undertake its requisite functions in accordance with the provisions of Section 34 of the Act and advise the Government in terms of clauses (6), (7) and (8) of this order immediately thereafter.

*Section 34 of the RTE Act reads:*

*“ 34 (1) The State Government shall constitute, by notification, a State Advisory Council consisting of such number of Members, not exceeding fifteen, as the State Government may deem necessary, to be appointed from amongst persons having knowledge and practical experience in the field of elementary education and child development.*

*(2) The functions of the State Advisory council shall be to advise the State Government on implementation of the provisions of the Act in an effective manner.*

12. Central Government and State Governments may set up a proper Regulatory Authority for supervision and effective functioning of the Act and its implementation.

13. Madrasas, Vedic Pathshalas etc. which predominantly provide religious instructions and do not provide for secular education stand outside the purview of the Act.

Judgment would have prospective operation and would apply from the next academic year 2012-13 onwards. However, admissions already granted would not be disturbed.