



HARYANA STATE LAW COMMISSION

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THIRTY-SIXTH REPORT

AMENDMENT TO THE RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT, 2009

Government of Haryana

HARYANA STATE LAW COMMISSION

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03.03.2026

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1. Children are the future of the Nation. It is the duty of the Government to take all necessary steps for the health, education and wellbeing of the children. Free and compulsory education for children was a part of the social vision of the makers of our Constitution. It was included in the Constitution under the Directive Principles of State Policy as a time bound mandate. However, the goal was elusive even after so many years as mandated under the Constitution. In its

historic judgment in the case of **Unni Krishnan v/s State of Andhra Pradesh**, reported in **(1993) 1 SCC 645**, the Hon'ble Supreme Court held that the children have the fundamental right to free education till they complete the age of 14 years. The said right flows from the birth of the child. By virtue of the Constitution (86th Amendment) Act, 2002, Article 21A—Right to Education was inserted as a fundamental right in Part-III of the Constitution of India. With this, India has moved forward to a right-based frame work that casts a legal obligation on the Central and State Governments to implement this fundamental child right, as enshrined in Article 21A of the Constitution, in accordance with the provisions of the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as 'RTE Act').

2. The importance and the intent of the RTE Act is clearly enunciated in its Statement of

Objects and Reasons. Paragraph 4 of Statement of Objects and Reasons of the RTE Act 2009 states that:

The proposed legislation is anchored in the belief that the values of equality, social justice and democracy and the creation of a just and humane society can be achieved only through the provision of inclusive elementary education to all. The provision of free and compulsory education of satisfactory quality to children from disadvantaged and weaker sections is, therefore, not merely the responsibility of schools run by the appropriate government but also of schools which are not dependent on government funds.

3. The Law Commission has usefully perused the article on the "Right to Education: Accessibility and Quality Dimension" by Dr. Justice S.R. Nayak, former Chief Justice of Chattisgarh.

4. Although RTE has been enforced with effect from 01.04.2010, the goals and objects set out in the RTE Act are not realized fully. There have been shortfalls and drawbacks in the legal regime and in its enforcement.

5. It has been brought to the notice of the Law Commission that there have been complaints that the students allotted by the State Government under the RTE quota are being discriminated, that they are being treated as second-class students, that they are not being allowed to mix with the other students (management- admitted students) and that they are being singled out for hostile discrimination in many respects. When the parents of the Government-allotted children express their inability to pay the exorbitant fees towards the uniform, extra-curricular activities, excursions, the conditions would be created for their exit. Even when such children have to exit from the schools for no fault of theirs, there is either a refusal to issue the transfer certificate or inordinate delay in issuing it by harassing both students and parents. Its unfortunate consequence is that the children from the economically

weaker and disadvantaged segments can neither continue their studies in the schools to which the Government has allotted them nor they can join some other school in the absence of the transfer certificate. They state that the teachers and management of some private unaided schools are inflicting physical and mental harassment on the hapless and helpless children, if their parents fail to pay the demanded amounts. This is nothing but the serious violation of many important provisions in the RTE Act. There is, therefore, an imminent need to address these problems.

6. On being asked as to whether the fees in respect of the children admitted to private unaided school under reserve quota is inclusive of transportation, uniform and other expenses, they answered that the issue is in grey area.

They rightly expressed their view that the enabling law is required to be made/amended. It was also suggested that a stringent provision be made in the Haryana Right of Children to Free and Compulsory Education Rules, 2011 providing for the withdrawal of recognition, if a school dishonors the allotment of a student made by the Government under the RTE quota. They also expressed their concern over the refusal of the school to issue the transfer certificate. It is clear violation of Section 5 under the Act; right of transfer to other school.

7. Keeping in view the difficulty being faced by the children to get transfer certificate, the Haryana State Law Commission is of the opinion that to redress this grievance of the children, Section 5(3) of the Right of Children to Free and Compulsory Education Act, 2009 is

required to be amended and Section 5(4) after the amended Section 5(3) should be inserted in the RTE Act as recommended:

RECOMMENDATION

The Haryana State Law Commission, therefore, recommends to the State Government the following amendments to:

THE RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT, 2009

The existing Section 5(3) is to be substituted by the amended Section 5(3) as follows:

"5(3): For seeking admission in such other school the Head-teacher or in-charge of school where such child was admitted shall issue transfer certificate within seven working days from the date of the written request for the issuance of transfer certificate:

Provided that if the Head-teacher or in-charge of the school delays the issuance of transfer certificate beyond seven working days on the instructions of the school Management, they shall be jointly and severally liable to pay the

penalty of Rs.1,000/- (Rupees one thousand only) for each day's delay beyond the expiry of the said time-frame, to the Government.

Provided further that delay in producing transfer certificate shall not be a ground for either delaying or denying admission in such other school;

Provided further that the Head-teacher or in-charge of the school delaying issuance of transfer certificate shall be liable for disciplinary action under the service rules applicable to him or her".

The following provision is to be inserted as Section 5 (4) after the amended Section 5(3):

"5(4): If the Head Teacher or the in-charge of school shows inaction or delay in the matter of issuance of the transfer certificate beyond 10 working days, the jurisdictional Block Education Officer shall call for the records from the concerned school and issue the transfer certificate forthwith".
