



# The Right to Education



**National Human Rights Commission  
India**



# **The Right to Education**



TRAINING & RESEARCH DIVISION  
**NATIONAL HUMAN RIGHTS COMMISSION  
INDIA**

## **The Right to Education**

© 2021, National Human Rights Commission, India

First Edition : 2020

First Reprint : 2021

Published by



**National Human Rights Commission**

Manav Adhikar Bhawan, C-Block

GPO Complex, INA, New Delhi - 110 023

Email : [covdnhrc@nic.in](mailto:covdnhrc@nic.in)

Website : [www.nhrc.nic.in](http://www.nhrc.nic.in)

Editorial & Technical Assistance :

Publications Unit, NHRC

Printed at

**SMAT FORMS**

3588, G.T. Road,

Old Subzi Mandi, Delhi-110007

Ph.: 9810520802

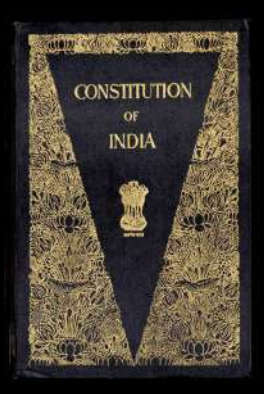
E-mail: [smatforms@gmail.com](mailto:smatforms@gmail.com)

# THE RIGHT TO EDUCATION

The **RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT (RTE Act)** was passed in 2009 to realise the fundamental right to education mentioned in Article 21A of the Constitution of India. Article 21A says that children between the ages of 6 to 14 years have the fundamental right to free and compulsory education.

The RTE Act furthers this right to education. It guarantees that every child between the ages of 6 to 14 years has the right to free and compulsory education in a neighbourhood school till completion of elementary education.

*Article 21A of the Constitution of India guarantees children between 6 to 14 years of age the fundamental right to free and compulsory education*



*The RTE Act further strengthens the right to education of children between 6 to 14 years of age*

## THE 4 KEY ELEMENTS OF THE RIGHT TO EDUCATION

*The right to education has 4 key elements:*



Every child between the ages of **6 to 14 years**



Has the right to **free and compulsory education**



In a **neighbourhood school**



Till completion of **elementary education**.



## UNDERSTANDING THE TERM 'EVERY CHILD BETWEEN THE AGES OF 6 AND 14 YEARS'

All children in India between the ages of 6 to 14 years, irrespective of where they live or what their circumstances are, have the right to free and compulsory education. *No child can be denied education between classes 1 to 8.*

*Suraj Mandal is 6 years old and has been visually challenged since birth. Sarita is 9 years old and, as a result of polio, she cannot walk. Debo Murmu is 7 years old. He has cerebral palsy. He cannot walk without help. He is unable to eat on his own. He also finds it difficult to speak. These children with disabilities cannot be denied the right to education.*

These children with disabilities have the right to education. It is the duty of the government to ensure that they go to school. The government has to take all steps to ensure that children with disabilities are able to go to school and study. This includes arranging for transportation, special teachers, appropriate text books, ramps, accessible toilets, etc.



*ALL children between 6 to 14 years of age have the right to education. There can be no discrimination on any grounds, whether gender, caste, class, disability, origin, or anything else*

*guaranteed the right to education.*

*Bhola is 8 years old and lives in Samastipur district in Bihar. Every year for seven months his parents go to Jalandhar in Punjab to work as agricultural labourers. Bhola and his 6 year old sister also accompany their parents as there is no one else to take care of them in the village. These children of migrant labourers are also*

Bhola and his sister have a right to education. It is the duty of the government to ensure that Bhola goes to school. The Punjab government has to ensure that Bhola attends school in Jalandhar and the Bihar government has to ensure that he goes to school in his village in Bihar. The Bihar and /or Punjab government can also provide facilities of a residential school to Bhola.

*Billoo is 12 years old and works in a roadside tea shop in Karnal, Haryana. Meena, a 13 year old from Jharkhand, is a domestic worker in Delhi. Both Billoo and Meena have the right to go to school and get educated.*

All children below the age of 14, including those who work for a living, have the right to go to school. It is the duty of the government to ensure that such children are not deprived of education. Billoo and Meena cannot be made to work in tea shops or as domestic workers. Employing children below the age of 14 for such work is prohibited and punishable under **The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986**.

*Chellam was 5 years old when he was found near a bus stop in Chennai. His parents could not be located, nor did he know the name of his village. The Child Welfare Committee sent him to a children's home in the city. He is now 9 years old. He has been living in the children's home for the last 4 years.*

*Vijay is 13 years old and is part of a gang of car thieves. He has been caught stealing cars for the third time. A case was registered against him and he was found guilty of theft and was sent to a special home by the Juvenile Justice Board for one year. Both Chellam and Vijay have the right to be educated under the RTE Act.*

All children in institutions (such as Chellam and Vijay) have a right to education and the government has to ensure that they go to school. They are in the custody of the state and it is the duty of the government to send them to school and protect their right to education.

Even if the children were in a private institution (such as a private orphanage), they should attend school.

*10 year old Salman and 12 year old Aamir live behind the railway tracks in Mumbai. Salman ran away from home because his father would drink and beat him up. Aamir's parents died in a cyclone in Odisha and he had no one to look after him. He got on a train to Mumbai in the hope that he would find some work there. Both Salman and Aamir manage to survive by doing some odd jobs at the various local stations. They don't go to school, but they have the right to education.*

It is the duty of the government to ensure that 'street children' such as Salman and Aamir are admitted to a school and are able to go to school regularly. The only way of doing this is may be by sending them to a residential school, which the government will have to facilitate.

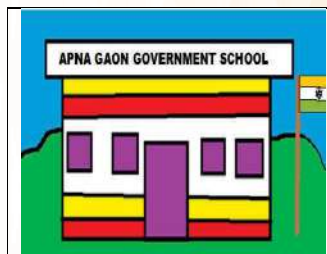
## UNDERSTANDING THE TERM 'FREE AND COMPULSORY EDUCATION'

### FREE EDUCATION

*With regard to free education, the RTE Act divides schools into 4 main categories:*



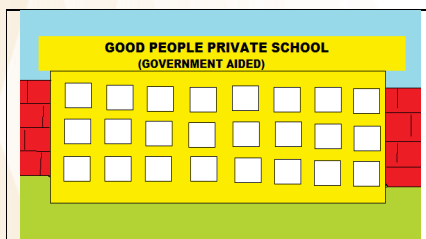
**Government schools** are those schools that are owned or controlled by the central government, state government or some local authority (e.g. municipal corporation, panchayat). *ALL children studying in government schools must be given free education*



*ALL children studying in government schools must be given free education*



**Aided Schools** are private schools which receive aid /funds partly or fully from the government. *Aided schools must provide free education to such percentage of students as corresponds to the aid received from the government.* **This is subject to a minimum of 25%.** Thus, if the funds received from the government covers 50% of an aided school's costs, then the school must give free education to 50% of its students. If the school receives 10% funding from the government, it has to give free education to 25% of its students (not 10%), as the RTE Act requires aided schools to maintain this minimum of 25%.



*An aided school must provide free education to at least 25% of its students. If the aid received is more than 25% of the school's expenses, the percentage of students receiving free education in the school must increase proportionately.*

*Garden school is a private school in a Patna. Till 2010 the school received grants from the government which amounted to 20 % of its total expenditure. There are about 3,000 children studying in the school. The school must provide 25% of these children free education, i.e. 750 children. In 2011 the government aid to the school went up 30% of the total expenditure. The school must provide education free of cost to at least 30% of the children i.e. 900 students.*

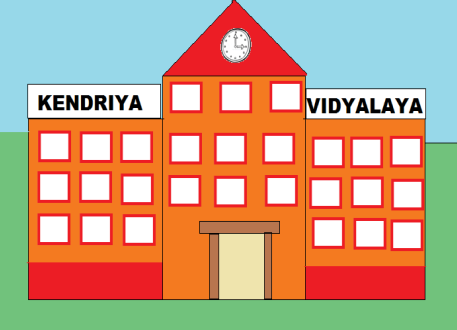





**Specified Schools** This refers to schools such as the Kendriya Vidyalayas, Navodaya Vidyalayas, and Sainik Schools.



**Unaided Schools** These are private schools which are not owned or controlled by the government and *receive no financial support from the government*



	
<p><i>Specified schools (e.g. Kendriya Vidyalayas, Navodaya Vidyalayas, Sainik Schools) must reserve 25% of their seats in Class 1 to children belonging to <b>weaker sections</b> and <b>disadvantaged groups</b></i></p>	<p><i>Unaided private schools receiving no financial support from the government must reserve 25% of their seats in Class 1 to children belonging to <b>weaker sections</b> and <b>disadvantaged groups</b></i></p>

Specified schools and unaided schools must reserve 25% of their seats in Class 1 (or in pre – school if they have pre – school classes) for children belonging to **weaker sections** and **disadvantaged groups**. The private unaided schools will reimbursed by the government for expenses incurred on such reserved seats.

*Children belonging to weaker sections or economically weaker sections (EWS) come from families whose total income is less than the minimum limit specified by the government. This limit differs from state to state, with an average of around 1 lac rupees per year.*

Children belonging to **disadvantaged groups** refers to:

- Children from Scheduled Castes
- Children from Scheduled Tribes
- Children with disabilities
- Children from socially and economically backward classes
- Children belonging to any other group that is specified by the government to be disadvantaged due to social, cultural, economic, geographical, linguistic, gender, or other factor

	
<i>Children from economically weaker sections are those whose parents/ guardians earn less than the minimum amount specified by the government</i>	<i>Children with disabilities, children from Scheduled Castes and Scheduled Tribes, are among children from disadvantaged groups</i>

*A.H. Public School in Delhi is a private school and receives no financial aid from the government. In 2011 it admitted 200 children in class 1. Out of these at least 25% of the children (i.e. 50 children) must belong to weaker sections and disadvantaged group and they must be given free education till class 8.*

In all categories of schools, **FREE EDUCATION** means that the children cannot be charged any money for application forms, fees, laboratory expenses, any extracurricular activities, etc.

Thus, no children in government schools can be made to pay for books, uniforms, fees, etc. So is the case with those children entitled to free education in aided schools, specified schools, or private unaided schools.

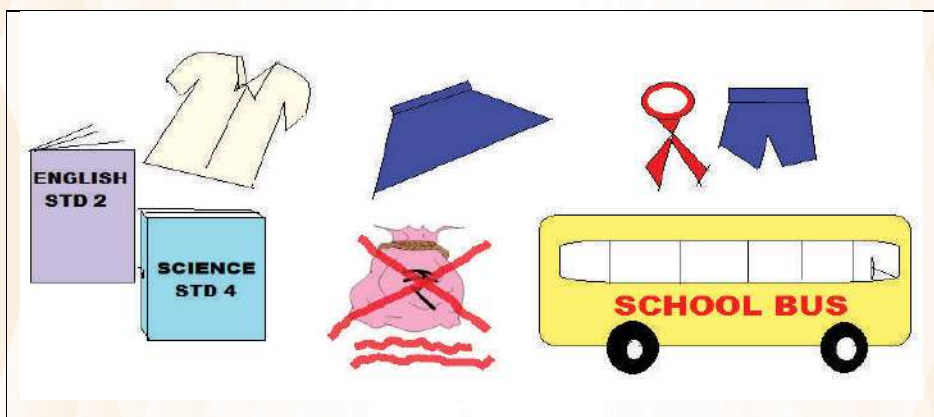
For example, a child with disability who cannot walk to school must be provided with transport facilities free of cost by the government to enable that child to attend school. Other expenses that cannot be charged in any government school include money for text books or uniforms, fees for any extracurricular activity (e.g. sports, arts and crafts), or building fund, etc.

*Anjum goes to the nearby government school and studies in class 4. She is not charged any school fees, but has to buy text books and note books. Her father works as a mechanic in a car garage. He has four other children and cannot afford text books and note books for all of his children. He and his wife are thinking about discontinuing Anjum's studies for financial reasons.*

*Free education means that the Anjum's father cannot be charged any fees or asked to buy text books or note books. These have to be provided free of cost in government schools.*

*A government school in Hissar, Haryana was taking Rs 200/- as fees from each child. The District Education Officer said that the parents of the children who come to the school are not poor and if they pay they will value the education given in the school.*

*No government school can charge fees. When the parents complained, the school had to refund the fees.*



*Education must be imparted to children in government schools at zero cost to the parents/guardians. There can be no extra charges for such things as uniforms, books or transport, etc.*

All children are entitled to free education from classes 1-8 in government schools. *However, if a child is sent by his/her parents to a private school instead of a neighbourhood government school, the parents will have to pay the fees themselves.* Of course, if the child has been admitted in the category of 25% seats reserved for economically weaker sections or disadvantaged groups, then the government will bear the expenses.

The Supreme Court has held<sup>1</sup> that minority schools do not come under the RTE Act. Minority schools are those schools protected by the fundamental right guaranteed in the Constitution under Article 30. Thus schools set up by religious and linguistic minorities in a state are not bound by the provisions of the RTE Act.

## COMPULSORY EDUCATION

The term 'COMPULSORY EDUCATION' refers not to any compulsion on any child, but rather the responsibility of the government to:



Provide free elementary education to every child between ages of 6-14 years, and



Ensure that every child between the ages of 6 to 14 years attends and completes elementary education.

Compulsory education means that the government must ensure that every child is studying in school and no child is refused admission on the grounds of non-availability of seats. The government must take all steps necessary to ensure that every child attends school regularly and actually completes class 8.

Nor can the government say that they do not have sufficient funds to ensure this. The right to education is not just a legal right under the RTE Act, it is also a fundamental right. **Lack of funds cannot be used as a reason by the government for not making available what is necessary under the right to education.**

---

<sup>1</sup> Pramati Educational and Cultural Trust & Others vs Union of India and Others (6 May 2014)

## UNDERSTANDING THE TERM 'NEIGHBOURHOOD SCHOOL'

Neighbourhood school means a nearby school which is easy and convenient for the children to reach. It is the duty of the government to set up schools in the neighbourhood. The central government and most of the state governments have prescribed that:

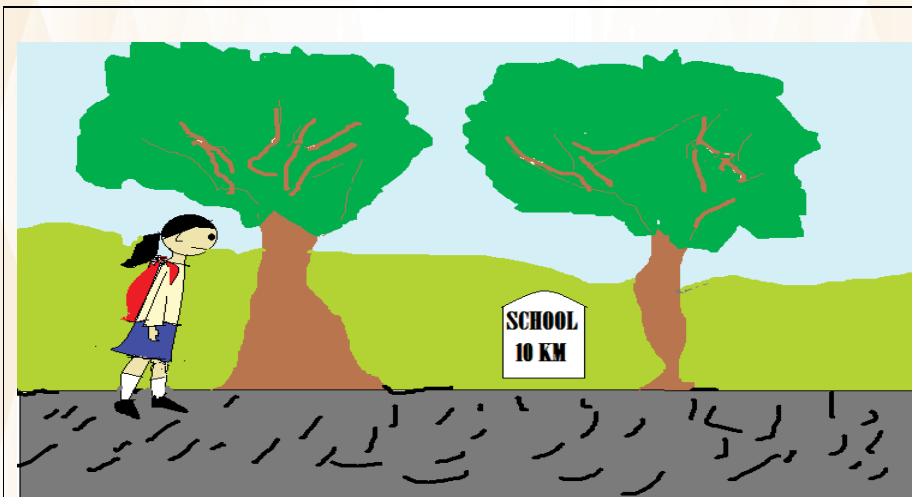


For children in classes 1-5, the school should be within a walking distance of 1 km



For children in classes 6- 8, the school should be within a walking distance of 3 km.

*Sumani Murmu lives in a village in Mayurbhanj district in Odisha. She studies in class 7, and her sister Suganti studies in class 2. Under the right to education law, Sumani should not have to walk more than 3 kms to go to school and Suganti should not have to walk more than 1 km to reach school.*



*Children have the right to study in a neighbourhood school. For children in classes 1-5, the school should be within a walking distance of 1 km. For children in classes 6- 8, the school should be within a walking distance of 3 km .*



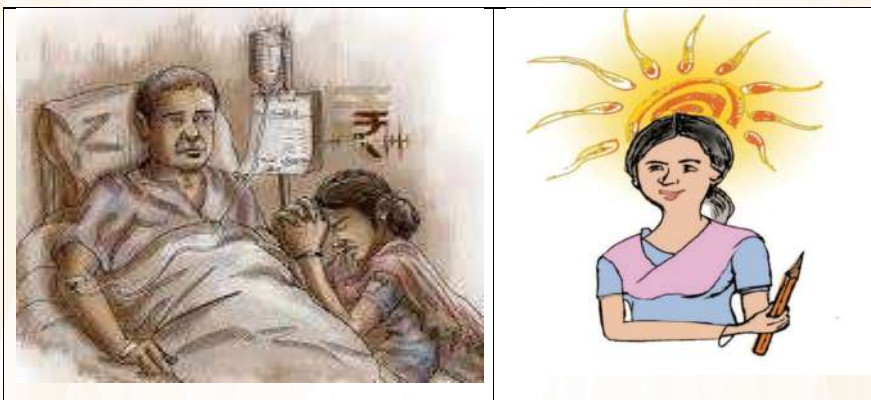
*In a slum colony in Kolkata there are many children studying in the nearby government primary school. There is overcrowding in the classrooms as this is the only government school for the children in the locality. The children have no place to sit. In each class there are over 50 children.*

*In such a situation, where the number of children in a classroom is more than the standard prescribed under the RTE Act (i.e. 30 students), the government must either construct more classrooms in the same school or set up another school, so that there is no overcrowding.*

There is no bar on the number of schools that the government can set up in the neighbourhood. Schools should be set up depending on the population of the area. There should be enough schools to cater to the children in the area.

### **UNDERSTANDING THE TERM 'ELEMENTARY EDUCATION'**

Elementary education means education from class 1 to class 8. All children must be educated till at least class 8. The right to education means not only being admitted to a school in class 1, but being able to complete class 8.



*When Anjali was 12 years old her carpenter father met with a serious accident and was bedridden for a year. As he could not work, Anjali's mother began earning a living as a domestic worker. Anjali had to drop out of school to take care of her father. When he recovered, Anjali was 13 years old. She can take re - admission in her school and study along with her previous classmates although she has missed one year of school. Her school should provide her with extra classes so that she can make up for the time she had to miss school*

Unfortunately, many children in India drop out of school, very often after class 5. This happens for many reasons. Some children leave because of poverty, and their families need them to earn a living. Very often, due to poor toilet facilities, girls drop out after they start menstruating. Many also leave as they have to stay at home and help with household chores and take care of younger siblings.

The RTE Act says that even if a child had dropped out of school, he/she has the right to take admission again to complete the elementary education. **Such children will be admitted in the class appropriate to their age.** This means that they will be admitted to the class in which children of their age are studying. Thus, it may happen that a 10 year old child drops out of school after passing class 4, but later decides to continue studies after 3 years i.e. when s/he is 13 years old. In this case the child will be admitted to the class with other 13 year olds. Thus the child will be admitted directly in class 8, in spite of not having completed classes 5, 6 and 7. Such a child is entitled to receive special training from the school so as not to fall behind the rest of the children in class.

*Parvati lives in a village near Almora in Uttarakhand. She studied till class 5 and then stopped going to school as the village school was only till class 5. The nearest school with classes from 6 onward was in Almora, about 5 kms away from her village. Most of the girls in her village had similarly dropped out of school after class 5. The government then introduced Classes 6 to 8 in Parvati's village school. By this time, Parvati was already out of school for 2 years. But she still has the right to complete her elementary education. Parvati has the right to be re-admitted to school and get free education till class 8. By the time she finishes class 8 Parvati will be above 14 years of age. But she is still entitled to free education till she completes class 8, even though she has crossed the age of 14.*

## OTHER ELEMENTS OF THE RIGHT TO EDUCATION

The right to education is not limited to just these key elements of children between the age of 6 to 14 years having the right to complete elementary education in a neighbourhood school. Quality education, safety, and non – discrimination are among other important aspects of the right to education.

***The other elements of the right to education are:***



### **The right to a safe environment in schools**

Children cannot be forced to study in a school that is not safe. It is the duty of the government to ensure that all school buildings meet with safety norms.

There should also be firefighting equipment in every school, with people trained on how to use it. Schools should also be regularly inspected by officials to ensure that safety standards are being met.

*In a government primary school in Siwan, Bihar, due to heavy rains, the roof of the fourth standard classroom collapsed. Around 12 students and a teacher were injured as a result. This is a violation of the RTE Act.*



### **The right of every child to study in an environment that is free from harassment**

This means that no child can be subject to physical punishment, mental harassment, or sexual abuse or harassment.

	<p><i>Hari is in class 5. He did not submit his Maths homework. The teacher gave him two extra days, but he still did not do it. Then his Maths teacher got angry and decided to teach Hari a lesson. He caned Hari several times in front of the class. This corporal punishment is a violation of Hari's right to education</i></p>
--	---

Physical punishment is not allowed. Under no circumstances can a teacher physically punish a child, even if it is only a single slap. Boxing, slapping, hitting with a stick, making a child stand in the sun or on the desk are all considered physical punishment, and prohibited under the RTE Act. Action can be taken against the teacher who carries out such punishment.

*Sheila is a Dalit girl and was studying in class 4 in the nearby primary school. She is very keen to study and likes going to school. A few months ago she started making excuses to not go to school. When her mother insisted on sending her to school, Sheila would leave the house but go elsewhere. Her mother realized something was wrong and asked Sheila about it. Sheila hesitantly told her mother that she has a new teacher who shouts at her a lot. The teacher would say things like, "Oh you low castes cannot understand anything. It is useless to teach you. You just want to get jobs through reservation." Some children would start laughing and Sheila felt humiliated and therefore did not want to go to school.*

*This is mental harassment, and is a violation of Sheila's right to education.*

Mental harassment of a child is a violation of the RTE Act. In any case of harassment of a child in school, a complaint can be filed before the School Management Committee, or the panchayat, or the Block Education officer. It is the duty of the government to take action in all such cases.

*Razia is 14 years old and is studying in class 7 in the neighbourhood school which has classes 1 to 12. A few senior boys pass lewd comments whenever they see Razia. They not only tease her, they often touch her as well. Razia is frightened. She does not want to go to school and is embarrassed about telling anyone at home or in school.*

*Razia's right to study in a secure environment has been violated. It is the duty of the school to ensure that the school environment is free from sexual harassment. The school has to ensure that action is taken against the boys. What the boys have done also amounts to a criminal offence, and action can also be taken against them under criminal law.*



### **The right to non – discrimination in school**

It is the duty of the school to ensure that a child is not discriminated against in school either at the time of admission or while attending school. Action must be taken against any person who commits discrimination. The Constitution and the RTE Act prohibit discrimination on the basis of gender, caste, religion, language, place of birth, etc.

*In a primary government school in a village in Uttar Pradesh there are many Dalit children. These Dalit children have been divided into groups of 4 and assigned the task of cleaning the toilets by turn every day. The school head teacher does not think there is anything wrong as they are keeping the school clean for themselves. He says there are no sweepers in the school and this is the only way he can keep the toilets clean. Otherwise, he will be in trouble if school inspector visits.*

*The school cannot do this. Making Dalit children clean toilets is discriminatory and violates the RTE Act. In fact making any of the children clean toilets is not right.*





*At the primary government school in Haryana, the cook who has been appointed to prepare the midday meal says that she needs help as she cannot cook for so many children all by herself. Instead of appointing an assistant cook, the head master arranged for the girls of Class 7 to take turns to help with the cooking. Although nearly half the students are boys, it was decided not to have them cook as their families would likely be angered by this.*

*This discrimination against girls is a violation of the RTE Act. Besides the gender based discrimination, it is also wrong to make children leave their classes to help cook the midday meal.*



### **Right of every child to good quality education and adequate facilities in school**

It is not enough for children to just attend school till Class 8 – they must also be learning effectively. Schools must have the infrastructure and facilities required to help children get good quality education.

Perhaps the most important requirement toward this end is the availability of good teachers. The right to education is meaningless unless there are sufficient qualified teachers. The RTE Act lays down the minimum qualifications required for teachers. It is the responsibility of the government to ensure that sufficient teachers are trained, recruited and paid their salary regularly.



*Schools must be properly equipped so that children can learn effectively and get good quality education. This includes having:*

		
<p><i>Adequate numbers of trained teachers</i></p>	<p><i>Availability of clean drinking water</i></p>	<p><i>Clean and functional toilets - separate for boys and girls</i></p>

Schools should also have facilities for clean drinking water, toilets and a boundary wall. Without drinking water and toilets it is not possible for children to remain for long hours in schools and study. It is the responsibility of the school to provide separate toilets for boys and girls. The toilets should be clean and have enough water.

*New toilets have been constructed in 11 year old Sattu's primary school. However, the children are not allowed to use them. The toilets are kept locked, and the keys are with the head teacher. The head teacher feels that if all the children start using them, the toilets will become filthy and unusable!*



### **Right to transparency in school admission**

The admission of children to school can only be made on a random basis. There cannot be a screening procedure or any selective method by which one child is chosen for admission over another child. Any test or interview of children or parents, or selection on the basis of education qualification of the parents, are examples of a screening procedure .

Only random selection of children for admission is allowed. Random selection includes *drawing lots* of names of children for deciding on admission. *Random*

*selection ensures that there is no favouritism or discrimination during the admission process.*

---

#### **PUNISHMENT FOR SCREENING PROCEDURE IN ADMISSIONS**

**Any school or person making a child or the parent go through any kind of screening procedure can be punished with a fine which may extend to Rs 25,000/-. If the offence is repeated, the penalty can go up to Rs.50,000/-**

---

'Capitation fee' is also banned under the RTE Act. Capitation fee means any donation or payment other than the declared fees of the school. It includes any money or other contribution taken by a school to guarantee admission.



---

#### **PUNISHMENT FOR TAKING CAPITATION FEE**

**Any school or person taking capitation fees can be punished with a fine which may extend to ten times the capitation fee charged. Thus, if a school takes 10 lakh rupees as capitation fee, it can be fined up to 1 crore rupees for the offence.**

---

## WHAT ONE CAN DO IN CASE OF VIOLATION OF THE RIGHT TO EDUCATION

The RTE Act has various avenues within it to address violations:



All schools (except unaided private schools) have a body called the **School Management Committee (SMC)**. The SMC of a school is made up of the students' parents, teachers and elected representatives of local bodies (e.g. panchayats, municipalities). The SMC is the first place one can go to if there is a violation of any provisions of the RTE Act.



One can also approach the relevant officials in the Department of Education or the Department of Elementary Education of the central or state governments. Local authorities (panchayats, municipal corporations, zilla parishad) can be approached directly for schools set up by them.



The National Commission for Protection of Child Rights (NCPCR) and the State Commissions for Protection of Child Rights (SCPCR) have been formed under **The Commissions for Protection of Child Rights Act, 2005**. The NCPCR has been set up at the centre, and SCPCRs are set up at the state level. The RTE Act specifically tasks these commissions to look into complaints filed under the RTE Act.









## NATIONAL HUMAN RIGHTS COMMISSION

Manav Adhikar Bhawan, C-Block, GPO Complex  
INA, New Delhi - 110 023  
Email : [covdnhrc@nic.in](mailto:covdnhrc@nic.in) Website : [www.nhrc.nic.in](http://www.nhrc.nic.in)