Jus Corpus Law Journal
Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rishikesh Dave; Publisher – Ayush Pandey

Critically examining the consequences of phasing out of Rule 134A of Haryana school education rules in the light of the Right to Education Act, 2009

Shivangi Vashishta[a]

[a]TERI School of Advanced Studies, New Delhi, India

Received 23 September 2022; *Accepted* 03 October 2022; *Published* 11 October 2022

This paper analyses the significance of Rule 134A of Haryana School Education Rules 2009[1] in easing access to private school education for children from economically weaker sections of society and the consequences of its discontinuation. The primary focus is on the significance of reservation in private unaided schools for children from economically weaker sections of society which gets forced from central as well as state level acts. The Right to Education Act, 2009[2] is one such act at the central level, which specifically provides for inclusive as well as quality education for all children aged from 6 to 14 years. Similarly, the Government of Haryana has postulated provisions through rules and acts at the state level which not only reiterate the objectives sought to accomplish by the right to education act but also go beyond the scope of the act to make school education more inclusive as well as easily accessible for children from all sections of the society. Our aim is to discuss one such provision i.e. Rule 134A. The paper has potential limitations pertaining to access to primary sources of information at the state level as well as time constraints.

Keywords: *education, rules, act.*

[1] Haryana School Education Rules 2009, rule 134A
[2] Right of Children to Free and Compulsory Education Act 2009

INTRODUCTION

India, a country with the largest youth population in the world, has struggled to provide for the most basic needs of its younger population since its inception. Education is one such valuable basic need as well as a fundamental right of all young citizens of this country. The actual importance assigned to it by the Government of India is evident from the fact of its annual expenditure in this sector is less than 3% of its GDP, a far cry from the ambitious ideal target set by the committee in 1966 of 6% which remains unachieved till date.

The Constitution (Eighty-sixth Amendment) Act, 2002[3] inserted Article 21-A in the Constitution of India[4] as a fundamental right which states that the state shall provide free and compulsory education to all children in the age group of six to fourteen years in such a manner as the State may, by law, determine. The onus of deciding the manner in which the object of this article will be achieved by the government has been left to the government to determine by law. The Right of Children to Free and Compulsory Education Act, 2009[5], which represents the consequential legislation envisaged under Article 21-A, means that every child has a right to full-time elementary education of satisfactory and equitable quality in a formal school that satisfies certain essential norms and standards.

The words free and compulsory are included in the title of the RTE Act which essentially highlights the intent behind the act. Free education means no sort of fees or charges or expenses which may hinder his/her admission and completion of elementary education will be imposed upon any child in India. This does not include in its scope those children who are voluntarily admitted to a private unaided school by his/her parents on payment of fees. Whereas, the usage of the words compulsory education makes it expedient for the state to guarantee as well as facilitate completion of elementary education for all children aged 6-14 years in India. Therefore, a rights-based framework has been adopted by India. It casts a legally-binding obligation on the

[3] Constitution (Eighty-sixth Amendment) Act 2002
[4] Constitution of India, art 21A
[5] Right of Children to Free and Compulsory Education Act 2009

state to implement the mandate of Article 21A of the Constitution through its agencies in due accordance with the RTE Act.[6]

However, to further advance the mandate given to the state under Article 21A to provide years to free education in Haryana, the Government of Haryana introduced Rule 134A (hereinafter referred to as the rule) in Haryana School Education Rules 2007[7]. The rule provides for 10% reservation in private schools in Haryana for the children from economically weaker sections (hereinafter referred to as EWS) of the society which are identified as sections of society in Haryana whose annual income is Rs. 1,80,000 or less. This paper discusses the effects of the phasing out of the rule on school education in Haryana while evaluating it in conjunction with the provisions of the RTE Act.

RESERVATION IN PRIVATE SCHOOLS FOR CHILDREN FROM ECONOMICALLY WEAKER SECTIONS OF SOCIETY IN INDIA

The legal mandate for reservation in private schools for children from EWSS in India is explicitly provided for by Section 12(1)(c) of the RTE Act.[8] This provision mandates all private unaided schools to provide admission to children belonging to EWSS equal to 25% of each class up to class 1. There has been a constant debate around the implementation of this particular provision which deals with the admission of children from EWSS up to Ist standard in private unaided schools. Therefore, in order to explicitly understand the object of this particular section, it is prudent to seek clarity from the Statement of Objects and Reasons (SOR) attached to the Right of Children to Free and Compulsory Education Bill, 2008,[9] which states that:

"The Right of Children to Free and Compulsory Education Bill, 2008, 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. Provision of free and compulsory education of satisfactory quality to children from disadvantaged and weaker sections is,

[6] Department of School Education and Literacy, Ministry of Education, Government of India
[7] Haryana School Education Rules 2007
[8] Right of Children to Free and Compulsory Education Act 2009, S 12(1)(c)
[9] Right of Children to Free and Compulsory Education Bill 2008

therefore, not merely the responsibility of schools run or supported by the appropriate Governments, but also of schools which are not dependent on Government funds."[10]

Hence, the ideology behind providing reservations in private schools is to further propel the ideals enshrined in the Constitution of India, especially to create an inclusive society. Likewise, the very purpose of inclusive schooling is in consonance with our Constitutional ideals and values, especially with the ideals of social justice, equal access to opportunity, and a feeling of brotherhood. Elementary education is the very basic education that any individual must possess, therefore, providing reservations in private schools reiterates the commitment of education providers to serve the common good of the nation irrespective of commercial gain or loss. The private unaided schools have been specifically included in the legal framework of the RTE Act in order to emphasize the fact that the real potential of India can only be realized when all the stakeholders of the education sector collectively take responsibility to provide opportunities to all children without any bias based on income, caste or religion.

The honourable supreme court, through its various landmark judgements like T.M. Pai Foundation vs the State of Karnataka[11] and P.A. Inamdar & Ors. v State of Maharashtra & Ors[12]has stated that since education is a charitable activity, clause 12(1)(c) of the act does not infringe the fundamental right as enshrined in Article 19(1)(g)[13] of the constitution to carry on a trade, business or profession and is in line with the constitutional goal of providing equal access to elementary education opportunities. The apex court has also held that in our society, the RTE Act places an affirmative burden on all stakeholders as well as envisages a mutual agreement between the parents and the state. Ensuring social integration and inclusive schooling are two major rationales behind clause 12(1)(c). Therefore, the policy of reservation in private schools is imperative and justified in the interest of the common good notwithstanding that it might unsettle some commercial as well as administrative interests of the private schools at large.

---

[10] Clarifications by the Ministry of Education on the Right of Children to Free and Compulsory Education 2009
[11] *TMA Pai Foundation v the State of Karnataka* 1994 SCC (2) 734
[12] *PA Inamdar & Ors v State of Maharashtra & Ors* Appeal (Civil) 5041 of 2005
[13] Constitution of India, art 19(1)(g)

Policies providing reservations to EWSS have been implemented by many states, tweaking the provisions to suit their unique conditions and requirements. Haryana, having a gross enrolment ratio in higher secondary education of 64.8% in the year 2019-20, needs to work towards ensuring that the goal of education for all is achieved beyond the elementary education level and this can be achieved by making secondary and senior secondary education more easily accessible for all children without any discrimination.

THE SIGNIFICANCE OF RULE 134A OF HARYANA SCHOOL EDUCATION RULES FOR THE STATE OF HARYANA

Rule 134A was introduced by the Government of Haryana in 2007 under the mandate of the Haryana School Education Act, 1995[14] provided for the reservation of 25% of seats in all privately recognised unaided schools. The rule in 2007 stated that the recognized private schools shall reserve 25% of seats for meritorious students belonging to economically weaker sections of society. It was amended in 2013 to bring the reservation percentage down to 10%.

Under the mandate of the rule, the school will charge fees to these students at the rate as charged in Government schools. As per the rule in 2007, the deficit of the fees shall be charged to the other non-EWS students of the school. In order to satisfy the mandatory stipulations of the rule, the children should provide proof of annual income which must be certified by the relevant Tehsildar.[15] The fee structure under the rule for students belonging to EWS admitted in the private unaided school is the same as in the government-aided school. There is no fee till class 8th monthly fee in the government-aided schools of Haryana, however, Rs. 25 is charged monthly for classes 9th and 10th. The monthly fee for classes 11th and 12th in the humanities stream is Rs. 50 and for science/commerce is Rs. 75.

Under the rule, on clearing the said entrance test, a child belonging to EWSS could not only study free of cost in a private school of their choice but could also subsequently change the school to choose some other school. However, under the mandate of the central RTE Act, neither

[14] Haryana School Education Act 1995
[15] (in India) a collector for, or official of, the revenue department

there is any provision for these children to gain direct admission to standards from 2nd to 12th nor will such children get the option to choose or change a school and consequently will have to get admitted to a nearby private school.

However, insofar as admissions in private unaided schools of children belonging to EWSS to classes II to XII are concerned, this domain is outside the purview of the RTE Act. Except for those students who took admission in the Ist standard under the mandate of Section 12 (1) (c) and later, got transferred to higher standards based on merit. Therefore, for the admissions of students belonging to EWSS in standards from 2nd to 12th in private unaided schools, the rule has the full operation and admissions to these classes in Haryana should be made in accordance therewith.[16]

Moreover, the Government of Haryana has not only decided to phase out the rule altogether but also make it voluntary for the private unaided schools to implement. There have been many reported instances of violation and non-implementation of the said rule when it was mandatory to implement, the major apprehension of the parents of the children from economically weaker sections is that the voluntary nature of the rule will make it irrelevant.

CONSEQUENCES OF THE PHASE-OUT OF RULE 134A

- **The phase-out of Rule 134A is against the inclusive education policy of the Government of India**

School education is the bedrock of the education sector and forms one of the most important factors having ramifications across all other developmental indicators. The government of India has implemented the RTE Act and the National Education Policy 2020 (hereinafter referred to as NEP 2020[17] to further advance the achievements of India in the education sector. It is reiterated by the objectives of the RTE Act and the NEP 2020 that education is the single most significant tool to achieve the ultimate goal of an inclusive and equitable society.

[16] *Haryana Progressive School's Conference v Union of India & Ors* CWP Nos 4925, 5035, 5259 of 2014
[17] National Education Policy 2020

The NEP 2020 under the heading "*Equitable and Inclusive Education: Learning for All*"[18]states that: "*The education system must aim to benefit India's children so that no child loses any opportunity to learn and excel because of circumstances of birth or background. This Policy reaffirms that bridging the social category gaps in access, participation, and learning outcomes in school education will continue to be one of the major goals of all education sector development programs.*"[19]

It is evident from the above-quoted paragraph that inclusive education is the basic goal of the education policy in India. And it is essential to highlight that the scope of making education inclusive is not restricted to elementary education only. A gross enrolment ratio of 100% in elementary education is indeed important as it is the most basic level of education. However, to truly utilize the human capital potential of India, a 100% gross enrolment ratio is required at the secondary and senior secondary levels as well. Therefore, the next step in the progression of the education policy is to provide equal access to education to all children irrespective of their age.

As has been quoted above, the very intention of the lawmakers behind the Right of Children to Free and Compulsory Education Bill, 2008 is to make society more just and humane and it is through inclusive elementary education only that it can be achieved. The right to easy access to education is very much a part of the Right to Equality under Ar. 14 and Right to Life under Ar. 21 of the Constitution of India[20] and such access should be available to all children across all classes without the handicap of affordability. Internationally, in 2015, India adopted goal 4 of the 2030 Agenda for Sustainable Development 2015 which puts an onus on the state to compulsorily provide inclusive and equitable quality education and encourage lifelong learning opportunities amongst all its citizens.[21] Under Ar. 51(c) of the Constitution of India,[22] the Government of India is under an obligation to respect its international treaty obligations. Hence

[18] NEP 2020, Ministry of Human Resource Development, Government of India
[19] *Ibid*
[20] Constitution of India, art 21
[21] Department of Economic and Social Affairs, 'Sustainable Development' (*United Nations*) <http://www.sdgindia2030.mospi.gov.in/dashboard/> assessed 22 September 2022
[22] Constitution of India, art 51(c)

inclusive and quality education have inevitably become the core of the education policy in India.[23]

Thus, the decision of the Government of Haryana of phasing out the rule is a step back in the process of making education truly inclusive. The children from EWS, with no mandatory access to private unaided schools in Haryana, will inevitably be left with no alternative but to study in government-aided schools. This creates segregation of children based on their economic prowess which not only defeats the goal of the RTE Act and NEP 2020 to make school education more inclusive but also defeats the constitutional goal of an egalitarian society.

- **The children from EWS seeking admission in the academic year 2022-23 will face issues getting admission to private schools in Haryana.**

The decision dated 28th March 2022 to phase out rule 134A has been made just before the admission process for the year 2022-23 is slated to start in April 2022. Although the admission process under the rule has been completed in the month of December 2021, however, the implementation of the said rule during 2022-23 admission has been made voluntary for the private unaided schools this year onwards. It is important to highlight the fact that when the rule was mandatory and the non-compliant private unaided schools faced the risk of losing recognition awarded by the government, there was a lack of proper implementation of the rule. Also, the rule was not complied with even when the Government of Haryana had mandated that it must be implemented in letter and spirit by the private unaided schools.

As a direct consequence of this decision, it has been reported that only 5% of the private unaided schools in Haryana have voluntarily adopted to implement the rule for the 2022-23 admissions. Therefore, the abrupt phasing out of the rule has caused disappointment to children belonging to EWS who were eligible for admission under the said rule as they will face a dearth of admission opportunities in the private unaided schools of Haryana.

[23] *Ibid*

- **The children from EWS in Haryana will miss the opportunity to take admission in private unaided schools beyond class 1**

As has been highlighted before, the major advantage of implementing the rule is that it provides an opportunity for meritorious children from EWS to seek admission in private unaided schools even beyond class 1. This is essentially significant because Haryana has a total gross enrolment ratio of 93.9% at the secondary school level and 64.8% at the higher secondary school level.[24] The rule played an important role in ensuring that not only the meritorious students belonging to EWS do not drop out due to lack of proper higher educational opportunities but also acted as a motivation for them to excel in their examinations to secure a chance to acquire expensive private school education that too at the cost of government aided school education.

Another drawback of phasing out of the rule will be for those students belonging to EWS who, for some or the other reason, choose to drop out from private unaided school at any time beyond class 1. Such children would have been allowed to take re-admission in the private unaided schools under the rule but now this option is abrogated as under the RTE Act EWS admissions are only available up to class 1.

- **The children from EWS will not be able to change and choose the private unaided school of their choice.**

Under RTE Act, the opportunity to change the private unaided school is not given to the children belonging to EWS. Such flexibility is provided by the rule as a child belonging to EWS who is already enrolled in a private unaided school can change and get admitted to any other private unaided school of her/his choice. Therefore, the direct consequence of phasing out the rule will be the lack of opportunity till now available to the children belonging to EWS to choose the private unaided school of their choice.

[24] Report on Unified District Information System for Education Plus (UDISE+) 2019-20, Ministry of Education, Government of India (UDISE+ is an updated and improved version of UDISE)

- **The phase-out of the rule will increase the burden on the already limited resources of the state which will indirectly affect the education opportunities available to the children seeking admission to schools in Haryana**

The direct impact of the phase-out of Rule 134A will be on the limited resources of the state, because the children belonging to EWS seeking admission in classes 2nd to 12th, will lack access to private unaided schools now. This will lead to increased admissions in government-aided schools over and above their capacities. Under RTE Act, the onus to educate all children aged 6-14 years is on the state. However, the private sector, being a major stakeholder in the school education sector should contribute to the advancement of the cause of inclusive education. The limit of 10% reservation for children from EWS is in fact in recognition of the fact that the synergy between government-aided and unaided schools can provide for the demand of children seeking admission in schools in Haryana to ensure a 100% gross enrolment ratio. [25]

THE FACTORS FAVOURING THE PHASE-OUT OF RULE 134A

- **The provisions of the said rule are inconsistent with the provisions of section 12(1)(c) of the Right to Education Act, 2009, hence repugnant**

Education is listed in the concurrent list of the Constitution of India. Both, the government of India and the Government of the state can legislate on the subjects mentioned in the concurrent list. Article 254 of the Constitution of India governs the law related to the concurrent list and it essentially states the doctrine of repugnancy in the context of the concurrent list subjects. The doctrine of repugnancy is a legal principle that comes into operation when two laws operating over the same subject matter conflict with each other such that one cannot be implemented without abrogating the other. A state act, if held to be repugnant to an act of Parliament is void. It is claimed by the petitioner in the Haryana Progressive School's Conference vs Union Of India & Ors[26], that the rule is inconsistent with section 12(1)(c) as both operate on the common ground

[25] Total enrolment in a specific level of education, regardless of age, expressed as a percentage of the eligible official school-age population corresponding to the same level of education in a given school year

[26] *Haryana Progressive School's Conference v Union of India & Ors* CWP Nos 4925, 5035, 5259 of 2014

of providing reservation in private unaided schools based on income level. Repugnancy does exist but only about the admissions up till class 1.

A state act is held to be repugnant to an act of parliament only when the inconsistencies between the two cannot be removed by applying any of the principles of interpretation of statutes like the doctrine of pith and substance, the doctrine of harmonious construction, etc. The honourable court in its judgment highlighted the fact that both provisions can coexist as they both operate on different grounds. Section 12(1)(c) governs the admission of children belonging to EWS in private unaided schools up till class 1 whereas the rule will govern admissions of such children in private unaided schools from class 2nd to 12th. It is also claimed that the rule is repugnant to the RTE Act as it provides 10% reservation whereas the RTE Act provides 25% reservation in private unaided schools based on maximum income level. It is imperative to highlight that the two provisions operate on two different domains and hence there exists no repugnancy as rightly held by the respected Court. The Court also upheld the legality and the validity of the rule.[27]

- **Lack of proper mechanism to provide clarity of the provisions of Rule 134A and to ensure its proper implementation**

It is one thing that an act is good on paper, it is another thing that the goals set by it are being achieved. For an act to achieve its set goals, there should be clarity about its purpose and the mechanism by which it has to be fulfilled. The Government of Haryana postulated the rule with the right intentions, however, the practical difficulties that can be faced by the stakeholders were not thought about. The peculiarities of the act governing its mandate like the amount of compensation to the private unaided schools, the minimum annual income of children from EWS , and chances of paper rigging were not evaluated against ground realities. It is indeed a fact that the implementation of Rule 134A has been troublesome since its inception. For example, there has been a constant struggle by the private unaided schools to not only know the right amount of reimbursements but also to receive them. The said schools have faced cases of false

[27] *Ibid*

income proof etc. There have been administrative issues like a lack of resources for the students belonging to economically weaker sections of society to participate in other activities of the school. In the year 2021, only 5% of the schools adopted Rule 134A.

- **Delay in compensating the private unaided schools for the reduced fees charged from the children of EWS:**

The private schools' major contention over the said rule has been the lack of clarity as to the quantum of reimbursement as well as the delay in reimbursement by the state government for the free education provided to the children belonging to the EWSS. According to the rule, as it stood in 2007, the deficit of fees for the students admitted under the rule was to be charged to other students. The rule after an amendment in 2013 states that the private unaided schools shall demand the fees from these students at a similar rate as charged in Government Schools.[28] It's important to highlight that the government-aided schools in Haryana charge no fees till class 8th. Hence the private schools struggled with the state government for many years to seek clarity over the provisions of the act. Honourable Punjab and Haryana High Court in *Haryana Progressive School's Conference vs Union Of India & Ors*[29] held the rule to be legal and valid while postulating few guidelines that provide clarity over the issues presented by the petitioners in the case challenging the validity of the rule.

The judgment of the honourable court stated that the payment of compensation for admissions given as per the rule should be similar to the payment mechanism under Section 12(2). The above-mentioned mandate is contingent upon private unaided schools providing free education to the children belonging to EWSS. While considering the standards 9th till 12th, the honourable court stated that the private unaided schools may demand fees from students given admission under the provisions of the rule, at the same rate as charged in Government run schools. It also stated that providing education under the mandate of the rule would not amount to giving

[28] Haryana Government Gazette (Extra.), 19 June 2013, School Education Department Notification No 8/43-2012 PS(2)

[29] *Haryana Progressive School's Conference v Union Of India & Ors* CWP Nos 4925, 5035, 5259 of 2014

education without any compensation, if the fees charged to students taking admission under the rule may not be equivalent to the fees levied on other students.

The honourable Supreme Court of India in cases like T.M.A. Pai Foundation (supra) and Pramati Educational & Cultural Trust & Ors. v Union of India & Ors. Etc.[30], has reiterated that the reservation provided for the children belonging to EWS is not against the right under Article 19 (1) (g)[31]. It is meant to achieve the constitutional goal of equality in elementary education. It was then concluded by the apex court that the operation of reservation under the mandate of Ar. 21A is not violative of Ar. 19 (1) (g). However, honourable Punjab and Haryana High Court have not only held the rule valid but has explicitly stated that private unaided schools cannot deny admission to students seeking admission in terms of Section 12 (1) (c) and the rule on the ground that payment of compensation has not been made by the government or that there exist any previous monetary compensation claims. The schools are obliged to grant admission to these students notwithstanding any pendency of any previous compensatory claims. However, schools have a right to seek compensation in a separate action for the settlement of claims.

- **The question over the credibility of the proof of income as well as the entrance exam conducted by the Haryana government as mandated by Rule 134A**

There are two conditions to avail of the benefit of Rule 134A, namely,

1. proof of income which is authorized by the Tehsildar and
2. the entrance test which is conducted by the government.

It is imperative to highlight that to be eligible to avail of the benefits provided by section 12 (a) of the RTE Act and rule 134A, the annual income of the person belonging to EWS and the backward section of the society should be less than Rs.1,80,000. However, for availing such benefits of reservations in Haryana for other purposes like seeking government or private jobs or admission at the university level, etc., the annual income of the person belonging to EWS should be less than Rs. 6,00,000. This essentially highlights the fact that the minimum income

[30] *Pramati Educational & Cultural Trust & Ors v Union of India & Ors* (2014) 8 SCC 1
[31] Constitution of India, art 19(1)(g)

limit for school admissions under the Act and the rule are unrealistically set far less than the minimum income limit for other purposes in Haryana. It is because of this reason that there have been suspicions over the authenticity of the proof of income as well as the entrance test. Thus, there is a lack of confidence in the authenticity and fairness of the said process as many aspects related to the implementation of the rule seem impractical like the minimum income limit has been set unrealistically low.

- **Under Rule 134-A the reservation is provided for "meritorious" students belonging to economically weaker sections and BPL (Below Poverty Line) category only**

The RTE Act, of 2009 has a broader mandate as it incorporates access to education for all children belonging to economically weaker sections of society as well as disadvantaged groups. On the other hand, the rule only prevails in the case of meritorious students, i.e. students who clear the entrance exam conducted by the government of Haryana. It excludes other children from its ambit which is against the spirit of the Fundamental Right of Children to Free and Compulsory education, i.e. Art. 21A of the Constitution of India. However, it is important to highlight that the state is compelled to classify students based on merit due to a lack of resources for the state to provide free education for all children without distinction based on merit.

However, the constitutional guarantee of free and compulsory education is explicitly for children belonging to the age group 6-14 years. Hence, the rule is beyond the scope of the RTE Act. The rule makes provision for meritorious students belonging to EWS till class 12th, essentially acting as a motivation for such students to realize their full potential as well as remove the affordability barrier for deserving students

CONCLUSION

Thus, the honourable court was correct in upholding the validity of Rule 134A as it is a progressive piece of legislation. However, the lack of proper mechanisms and provisions to aid its implementation has led to constant debate over its relevance. It is important to highlight that the purpose of all acts, policies, and programs, however brilliant on paper, is defeated if their mandate is not followed up with action. For example, the Right to Education Act,2009, despite

being landmark legislation, suffers from serious implementation errors and a lack of clarity in provisions. Therefore, the decision to phase out the rule, though riddled with implementation challenges and lack of clarity as to its provisions by the state government, should be reconsidered and efforts should be made to overcome the challenges faced in its successful implementation. It is also important to highlight that the Right to easy access to education is very much a part of the Right to Life under Ar. 21 of the Constitution of India and such access should be available to all children across all classes without the handicap of affordability. Hence, private schools should undertake the responsibility to support the governments in making society in India more inclusive and equitable.