

The Right to Education Bill 2005

A Constructive Critique

Rohan Mukherjee*

This policy note aims to provide a constructive critique of the Bill and its provisions. It is divided into the following sections: Section I sets out the meaning and implications of the right to education. Section II examines the extent to which the realities of our elementary education system and the normative content of government policy in this regard match the requirements of the right to education. Section III takes a comprehensive look at the provisions of the Bill and discusses questions of scope, design and its failure to target important systemic issues in elementary education. Section IV contains a brief yet fundamental criticism of the philosophy of the Bill by way of concluding remarks.

*Research Associate, National Knowledge Commission, New Delhi, India. Email: rohan.mukherjee@gmail.com

The third and most recent attempt made by the Government to draft a Bill on the constitutionally mandated right to free and compulsory education for children aged six to 14 years is in many ways a step in the right direction. However, it contains a number of flaws that could rob the Act of any efficacy whatsoever if not appropriately amended. This article aims to provide a constructive critique of the Bill and its provisions. It is divided into the following sections: Section I sets out the meaning and implications of the right to education. Section II examines the extent to which the realities of our elementary education system and the normative content of government policy in this regard match the requirements of the right to education. Section III takes a comprehensive look at the provisions of the Bill and discusses questions of scope, design and its failure to target important systemic issues in elementary education. Section IV contains a brief yet fundamental criticism of the philosophy of the Bill by way of concluding remarks.

I

Implications of Right to Education

Education is a fundamental human right because it is the gateway to the enjoyment of other human rights for an individual. It is for this reason that the Supreme Court has asserted in the past that the right to education flows from the right to life – an individual's right to life is not fully realised without education. It enriches the lives of human beings by creating a greater awareness of themselves, their surroundings, their social, political, economic and cultural rights, the society or nation they are a part of, and the ways and means in which they can improve their life chances – be it through employment, health awareness or technological advancement. Denial of the right to education, therefore, is a denial of all the other human rights that it provides access to.

To understand the implications of the right to education, we must understand the concept of a right. A right is most commonly understood as an individual or a group's

claim upon someone or something. A right possessed by X generates a corresponding obligation in Y, which can be the state, society, a community or an individual. In the current context, the right to education has been construed as a claim on the state to make education universal, free and compulsory. The Constitution (86th Amendment) Act, 2002, modified Article 21 of the Indian Constitution to make the right to free and compulsory education for all children aged 6-14 a fundamental right. The state was required to frame an appropriate law that would operationalise this Constitutional pledge.

However, the right to free and compulsory education is not the same as the right to education. It is much less. Making elementary education universal, free and compulsory is the very least a nation can do for its children. Katarina Tomaševski, the UN's first Special Rapporteur on the right to education, lays out a broad framework for the obligations of the state vis-à-vis the right to education. According to this, the right to education obliges a state to make education available, accessible, acceptable and adaptable. Correspondingly, this imposes four categories of obligations on the state. Firstly, it must make education available to all children – this entails establishing or financing schools and also allowing non-state actors to do the same. Secondly, it must make education free for all those in the compulsory age group – this normally comprises children eligible for either primary or elementary education,¹ depending on the state in question. Thirdly, it must ensure that education imparted at the elementary level is of good quality, that school books are not censored, that the language of instruction suits the needs of the students (especially for linguistic minorities and indigenous peoples), and that physical punishment is banned in schools. Lastly, it must ensure that education takes a child-centred approach and includes those who have traditionally been excluded from the system, e.g. children who are disabled, working, victims of conflict etc.

From the above it is clear that by legally guaranteeing free and compulsory education for all children, a state would only be fulfilling the conditions of availability and accessibility. The result would be a system that tended to full enrolment but with a high rate of repetition and dropout as well as poor performance and low teaching standards. It is no surprise, therefore, that recent figures for Indian elementary education show a Gross Enrolment Rate (GER) of 82.5 per cent with a dropout rate of 52.79 per cent by Class VIII and only 26 per cent of all teachers possessing a B.Ed. degree or higher. The juncture we find ourselves at today is the result of lopsided policies that have not paid enough attention to quality in elementary education, thus rendering it unacceptable and inadaptable to the needs of our children. To understand better how this has happened, it is important to consider the normative underpinnings of Indian education policy and how they have evolved over the years, if at all.

II

Content of Policy

Indian education policy has always been driven by an instrumentalist view of individuals, in that they are viewed as human 'capital' or human 'resources' that need

¹ In the Indian context, Primary Education spans Classes I-V and Elementary Education spans Classes I-VIII.

to be developed for the betterment of society and the nation. Since post-Independence days, Indian policymakers have considered education to be a facilitator of economic development and material progress, or a means of achieving greater national integration and social consciousness through the creation of a morally upright citizenry. If ever the individual as human being has come into the picture, it has been through the view that education develops the individual into a self-confident citizen with a strong commitment to the values of democracy, secularism and socialism enshrined in the Constitution. This is not the same as considering education to be crucial to the individual's development as a thinking being, for the sake of spiritual and intellectual enlightenment and the betterment of one's own life and life chances. While occasional lip service has been paid to the latter concept, the traditionally dominant view can be summed up in the proclamation of the Ministry of Education (as it was known then) in its 1985 policy perspective document titled *Challenge of Education*, in which it said, "...through proper education, the achievement of economic and social development can be facilitated and expedited. Human resource development has a multiplier effect on the utilisation of all other resources.²" It is no doubt a telling sign that the Ministry of Education was renamed the Ministry of Human Resource Development around the same time.

The emphasis at the top on the instrumental value of education for society rather than its inherent value for the individual has percolated through the educational system itself, where qualifications matter more than competencies and teaching methods are geared towards examinations rather than all-round character development. This goal-oriented paradigm has over time produced two major policy strategies vis-à-vis elementary education, namely expansion and equity. The former has been in place since post-Independence days and has involved expansion of both infrastructure and enrolment. The latter evolved during the 1970s when it was realised that a straightforward policy of expansion had produced uneven educational development between social groups, geographical regions and the sexes. Unfortunately the goal of equity too was targeted through the route of expansion – efforts to extend the system to the traditionally disadvantaged and excluded have been going on since the 1980s. Recently they have intensified under the SSA (Sarva Shiksha Abhiyan), EGS (Education Guarantee Scheme) and Alternative and Innovative Education (AIE) schemes.

Although expansion, or making the system more inclusive, is one way of achieving equity, the ideology behind it draws the line of state responsibility at the point where a child is given the opportunity of attending school and receiving instruction from a teacher. Beyond this point it is presumed that if teachers are well-trained (20 days in a year) and enough funds are poured into teaching-learning materials (Rs. 500 per teacher per annum), the child will emerge at the other end in possession of all the competencies and skills associated with the elementary level. If all children were equal and the education system was some sort of magic box, this would be an excellent policy. While it is true that a concentrated enrolment policy is likely to bring a girl or a child of a lower caste into school, it does not in any way ensure that she will perform as well as her male or upper caste counterpart, or even stay in school for

² The contrast is sharper when compared to the words of K. Tomaševski: "Education operates as multiplier, enhancing the enjoyment of all individual rights and freedoms where the right to education is effectively guaranteed, while depriving people of the enjoyment of many rights and freedoms where the right to education is denied or violated."

that matter. However, with the right kind of guidance from teachers and the appropriate learning environment, she can do equally well if not better. It thus emerges that there is an undeniable link between quality and equity, a point aptly highlighted in UNESCO's Education For All (EFA) Global Monitoring Report 2005, which points out that poor instruction is a significant source of inequality.

Indeed our policymakers are not unaware of this link. Our modern educational policies, originating from the 1986 National Policy, can broadly be divided into three categories – enrolment, retention and achievement. Of these, both retention and achievement policies aim to take the quality enhancing route. Yet, predictably, enrolment (and associated infrastructure expansion) has always had the lion's share of attention³. Although token efforts have been made to increase retention by better training teachers so they may adopt a more imaginative and child-centred approach to teaching, on the whole these have had limited success. Achievement, the third policy goal and the most common measure of quality, has been routinely ignored. A Terminal Assessment Survey (TAS) conducted in a total of 132 DPEP (District Primary Education Programme) Phase-I and Phase-II districts in 2001 and 2003 revealed that in Language and Mathematics tests given to Class III-IV students, the percentage of districts in which the average marks exceeded 60 out of 100 were 43.2 per cent and 28.8 per cent respectively. A similar study in 1994 and 1998, covering a total of 114,391 primary school students, showed that 66.3 per cent of Class IV students scored less than 40 out of 100 in the Language test and 72.2 per cent scored below 40 in the Mathematics test. The glaring implication is that increasing numbers of children are being enrolled in school but they are not performing up to the minimum level required of them and more than half of them are leaving school by the end of the elementary stage. While the rest of the world celebrates the quality of our doctors, engineers and software professionals, and the Prime Minister speaks of India developing into a strong knowledge economy this Century, the fate of our school-going children remains crucially uncertain. With 35 per cent of our population below the age of 15, no serious talk of a knowledge economy can ignore the precarious future of its primary factor market. In this context, the Right to Education Bill gives us a historic opportunity to correct the imbalances of the past and secure the foundations of our educational system.

III Scope and Design

Age Group

The first and most basic question that many have asked of the Bill is in relation to its scope – why does the Bill restrict the definition of 'child' to persons who are not less than six years of age and not more than fourteen? Surely if India is a signatory to the 1989 UN Convention on the Rights of the Child, it should adopt the definition used by it, which covers any person under the age of eighteen years. Moreover, the Supreme Court has said twice (in the cases of *Mohini Jain vs. State of Karnataka* (1992) and *Unni Krishnan vs. State of Andhra Pradesh*(1993)) that the right to education, not just elementary education, is a fundamental right that flows from the right to life in Article 21 of the Indian Constitution; so to exclude Early Childhood Care and Education (ECCE) and secondary education is unconstitutional.

³ This is probably because it is easier to show progress by way of deliverables through enrolment or capacity expansion.

While there is obvious merit in these claims, taking an undifferentiated view of all those under the age of eighteen can be problematic in the case of the right to education. First and foremost, we must distinguish between the two excluded ends of the spectrum – children below the age of six, and those aged 15-18. It is clear that those in the former group have a greater claim to inclusion than those in the latter, since the importance of Early Childhood Care and Education (ECCE) cannot be underestimated in the long-term development of a child into a capable and productive individual. To this end the Sarva Shiksha Abhiyan (SSA) has taken concrete steps and recent figures show that 80,173 ECCE centres have been made operational under it and other government programmes. Nonetheless, this figure is low and India ranks poorly in the field of ECCE even when compared to neighbouring countries like Pakistan and the Maldives. Article 45 in Part IV of the Constitution, before it was amended, required the state to endeavour to provide free and compulsory education for children until the age of fourteen. The 86th Amendment essentially transplanted the 6-14 age group from Part IV (Directive Principles of State Policy) to Part III (Fundamental Rights) and left those under the age of six languishing under Article 45 whereby the state is expected, but not bound, to provide them with free and compulsory education. Accordingly, Section 7 of the Bill directs the appropriate government to “endeavour to provide facilities for pre-school education...for children between the ages of 3 and 6 years...through Integrated Child Development Services (ICDS) or other government programmes”. Not only does this exclude children below the age of three, it also betrays those aged 3-6 years by leaving their fate in the hands of programmes like the ICDS, a poorly run and highly corrupt institution that has failed them so far and will continue to do so if the government is required to do no more than ‘endeavour’. This is no doubt a grievous error on the Central Government’s part that must be corrected by the inclusion of those under six in Article 21A of the Constitution and in the definition of ‘child’ in the Bill.

The case of those aged 15-18 years, however, is less defensible. In this context it is important to remember that there exists a considerable gap between the normative content of judicial proclamations on the right to education and the ground realities of the educational system, in particular the government’s ability to manage and finance it. In recent years India’s total expenditure on education as a percentage of GDP has hovered around the 4 per cent mark, falling well short of the 6 per cent target set by the Kothari Commission in 1968. In 2003-04 the total outlay on elementary education was 2 per cent of GDP, roughly half the total amount spent on education. The National Institute of Educational Planning and Administration (NIEPA) has provisionally calculated that in order to fully implement the requirements of the current Right to Education Bill, the government would have to spend an additional 1.51 per cent of GDP⁴ on elementary education annually for six years from 2006. Thus the total spending on elementary education, i.e. just for those aged 6-14 years, would amount to 3.5 per cent of GDP annually. Given that the Indian state has never achieved a total outlay on education of more than 4.3 per cent of GDP, it seems highly unlikely that even the current Bill, if enacted, would be fully implemented. The lesson here is that even a fundamental right can only be fulfilled to the extent that the state is capable of doing so administratively and financially without impinging on other rights

⁴ Based on a best case scenario where a Pupil-Teacher Ratio (PTR) of 35 is achieved and teachers are paid salaries based on Kendriya Vidyalaya School (KVS) scales, i.e. an average of Rs. 7965 per month with an annual increment of Rs. 800.

and duties, embodied by its priorities in different sectors of society and the economy. Indeed one might argue that the state should not be blinkered by an estimate that was set almost four decades ago, but should in fact spend much more on education. However, to try and effect a fundamental reorientation of the government's spending priorities would be akin to trying to teach an old dog new tricks. Within the existing parameters of social change in India, the constitutional guarantee given to children aged 6-14 years should at the very least be considered a positive sign of the current government's commitment to social objectives. It should be viewed as a significant step towards the eventual inclusion in Article 21A of all persons below the age of eighteen years. Change, albeit in a piecemeal fashion, is better than stagnation or decline, and often more stable than wholesale reform.

Lastly, one has to also consider that aiming for the coverage of all persons below the age of eighteen under the right to education in the immediate circumstances would pose a threat to the long-term legitimacy of the judicial system, which is duty-bound to protect and uphold the fundamental rights enshrined in the Constitution. Were the free and compulsory education of all those under eighteen made a fundamental right, the court's diktats in this regard to a state that systematically failed to deliver would end up sounding rather hollow over time. It would therefore currently be more productive if informed opinion-makers played the role of constructive critics who could strive to optimise the pending legislation in the short term (by, for example, including children below the age of six) while prompting the state to implement social and economic policies that will eventually create conditions that will allow a broader scope for the fundamental right to free and compulsory education in the long term.

Learning Disabilities

While the Bill has provisions to meet the learning needs of disabled children – they are included within the category of disadvantaged groups and hence have a claim to equal opportunities in education – the definition it employs of 'disability' is taken from the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. This definition does not include children who suffer from learning disabilities, e.g. dyslexia or autism. Learning disabilities affect more than 30 million children in India and yet the Right to Education Bill does not recognise them as a group worthy of equal consideration. Often children who suffer from these disorders are highly intelligent and can contribute much to society if their condition is properly understood and appropriate non-conventional teaching methods are devised to tap their intellectual potential. Unfortunately our country's legislators, policymakers, educationists and teachers have not recognised the need for dealing with this issue sensitively and imaginatively. On the ground level teachers often label such children 'slow' or 'dull' when in fact they are quite the opposite. The Disabilities Act covers people who exhibit blindness, low vision, cured leprosy, hearing impairment, loco motor disability, mental retardation and mental illness. Learning disabilities do not fall into any of these categories and the children suffering from them are therefore overlooked. Legal recognition of this category and an improvement in teacher quality by way of sensitisation towards this issue would go a long way to achieving education of 'equitable quality' as promised in the Bill's Preamble.

Design

If issues related to scope are set aside for the time being and the efficacy of the Bill is considered in terms of guaranteeing the right to elementary education alone, other questions arise as to the structure and functions of Local Authorities and School Management Committees (SMCs) under the Bill, as well as issues of access and transitional programmes for non-enrolled children.

Local Authorities

While the previous draft of the Bill had proposed a ponderous parallel bureaucracy of elementary education authorities for the implementation and monitoring of its provisions, the current draft has eliminated the superfluity of the previous structure but concurrently given the same responsibilities to Panchayats, Municipalities, and other bodies as State governments may prescribe. Section 12 of the Bill describes the responsibilities of Local Authorities, which are entrusted, inter alia, with planning, budgeting and providing for additional schools, teachers and facilities, as well as monitoring the provisioning of the same within their respective local areas. Needless to say, there are potential hazards involved firstly in allowing local elected bodies to manage elementary education and secondly in assigning the functions of planning, budgeting, provisioning and monitoring all to the same body. It is easy to envisage how existing patron-client relationships in the political milieu of local government can distort the educational priorities of Local Authorities and lead to uneven development between institutions, areas and social groups, thus contradicting the objective of 'equitable quality' espoused by the Bill. Of course the risks of such an outcome are equally high under a bureaucratic setup, which is why it would make more sense to share the powers of planning, budgeting, provisioning and monitoring between the elected bodies and the existing education bureaucracy in a State, without setting up any parallel institutions. The Bill does not do this; in fact it does not even require the State government to monitor the activities of Local Authorities. Above this level the job seems to have been left to the National Commission for Elementary Education. To expect a National Commission to monitor every Local Authority's methods of educational planning and management is unrealistic, to say the least.

School Management Committees

Similar problems arise in the design of the School Management Committee (SMC). Section 22 of the Bill describes the composition of the SMC – at least three-fourths of its members are to be parents/guardians of children studying in the school and remaining members will include representatives of the Local Authority, teachers, and persons/bodies working for education. While this is a very positive step towards greater community ownership and control of elementary education, it does not take into account two factors – one, that many children are first generation learners and hence have parents who are uneducated. While such parents might strongly believe in and support the idea of their children going to school, they will most likely defer to the superior qualification and knowledge of the teacher(s)/Head Teacher on the SMC on matters pertaining to the content, quality or process of education itself. This might very well defeat the purpose of an inclusive SMC structure. Second, many teachers are politically active and organised into unions, with connections to senior politicians. The duties they perform during elections to Local Authorities and the State and Central legislatures make them very dear to politicians at all levels, thus obfuscating their accountability to parents and other members of the community, with negative

consequences for elementary education. This was highlighted recently by an article in *The Outlook* on Punjab's decision to gradually privatise its primary education system – State functionaries justified their decision by blaming the teacher-politician nexus and the lack of any institutional checks on teachers for the decline of education in recent years.

Given these facts, it is hard to imagine how a community will be able to exercise control and ownership over its schools in cases where teachers are politically powerful or communities politically weak. The Bill itself is confused on such issues. While on the one hand it gives the SMC powers to monitor teachers, disburse their salaries (and deduct from it for unauthorised absence), grant their leave, and impose punishments for indiscipline, on the other hand it continues to allow the deployment of teachers for duties in elections to Local Authorities, State Legislatures and Parliament. The fact that representatives of the Local Authority are also members of the SMC only complicates matters further. The end result in many cases will be a power struggle between the teachers and parents, which will adversely affect the interests of the children. Such situations would be exacerbated many times over by Section 23 of the Bill, which prohibits transfers of teachers once they have been appointed to a school (more on this further on). A better strategy would be to leave Local Authorities out of the SMC, remove teachers from election duty and put in place clauses that ensure transparency in all SMC decisions so as to maintain a proper balance of power between parents and teachers.

Non-Enrolled Children

Another issue of design pertains to the manner in which the Bill chooses to mainstream non-enrolled children. Sub-sections 2 and 3 of Section 3 state that non-enrolled children aged 7-9 years have the right to be admitted to an “age appropriate grade” in a neighbourhood school within one year from the commencement of the Act and non-enrolled children aged 9-14 years have the right to be provided “special programmes” within a neighbourhood school to enable them to “join the age appropriate grade as early as possible, but in any case within three years of commencement” (emphasis added). Age appropriate grade is defined as “the grade in which the child should currently be studying if she was enrolled in Grade I around the time she completed six years of age, and had thereafter participated in elementary education continuously.” While this formulation is not entirely clear, the conclusion one draws from it is that an 11-year old non-enrolled child, for example, has the right to special programmes for a maximum period of three years before she must join a neighbourhood school in Class VIII.⁵

The previous draft of the Bill was widely criticised for advocating a parallel system of schooling through ‘transitional schools’ along the EGS model – these schools would have less facilities and lower-qualified instructors, and they could be run beyond the stipulated three-year period via government notification. The current draft, while not mentioning transitional schools, does face the potential problem of creating a similar system. For a start, no norms have been established for the ‘special programmes’ to be run in neighbourhood schools for non-enrolled children. This leaves everything to the discretion of the particular neighbourhood school running the programme. No doubt a programme that is intended to bring a previously unschooled 11-year old child (for

⁵ She would be 14 years old by then and hence the appropriate grade for her age would be Class VIII.

example) up to Class VIII level in three years would have to be very intensive, requiring sustained, committed and sensitive teaching. Yet, by leaving the matter undecided (not even to be prescribed by the State or Central governments), the Bill has left the door open to neighbourhood schools setting up 'transitional' programmes in their own backyards.

Birth Registration

The final issue of design pertains to Section 49(2) of the Bill, which states: "Ordinarily the birth certificate and, in its absence, a declaration by the parent or guardian shall be treated as prima facie proof of the age of a child, unless the admitting authority has reason to disbelieve it. In case it is disbelieved, the admitting authority shall determine the child's age after making an inquiry in such manner as may be prescribed". Birth registration, or the 'first right' of a child, is a major problem in our country, especially in rural areas. Parents have to navigate a tortuous maze of red tape, bureaucratic intransigence and graft in order to obtain a piece of paper that gives their child an official identity. Often, after repeated attempts in vain, they give up, not realising that an essential right of their child has been violated. Equally significant is the fact that school admission (and access to other services) is normally impossible without a birth certificate. The Bill seems to want to change that regulation, but not by much.

A recent article on the *India Together* website quoted Jayant Banthia, former Registrar General and Census Commissioner of India, who said that there are about 72,000 births per day in India, of which less than 57 per cent are registered. Therefore it is safe to assume that a large number of children are currently enrolled in school through illegal means, most of which probably involve a bribe paid to the Head Teacher. Given this tradition, it is unlikely that a declaration from ordinary rural parents of their child's age will pass muster under the eyes of the 'admitting authority' who can very easily find a "reason to disbelieve" the same. Moreover, the Bill leaves the inquiry process to be specified by the appropriate government – this will inevitably lead to regional disparities in admission procedures. A much better strategy would be to codify a commitment to ensuring a child's right to identity by targeting the cause of the problem – the difficulty of obtaining a birth certificate. A Parliamentary law containing provisions to this effect would be of great service both to our children and their parents.

The issues highlighted so far arise out of the government's inability to acknowledge or comprehend the ground realities of our education system and the political economy of education in India. The next sub-section, dealing with systemic issues that have been improperly dealt with, reveals more of the same.

Systemic Issues

The main theme that links the concerns presented in this section is quality. The contention is that only a focus on quality across the system can provide an effective method of dealing with these problems. How the Bill stands up to this task will be the main focus.

At the outset it will be useful to define what is meant by quality in elementary education. In the narrowest sense, it relates primarily to pupil achievement levels, teaching standards, and infrastructure and facilities at school. Thus for a student to receive education of a good standard, she must achieve the minimum skills and competencies appropriate to her educational level in a suitable learning environment that sustains her interest with adequate facilities and teachers who are sensitive, patient, innovative and well-qualified. A broader conception of quality links it to equity and requires that the teaching-learning environment be such that the disadvantages faced by each student – natural, economic, social, or cultural – are minimised to the extent that the inequalities between students are bridged through education, which must in some sense maximally benefit the minimally advantaged in order to be of good quality. The main indicators of quality, therefore, are retention, repetition and dropout rates, student achievement (of an equitable nature), school facilities and teaching standards and techniques.

That our current system fails on all these counts is no state secret. The most recent DISE (District Information System for Education) data for student flow covering 15 States shows that in these States a total of 12.2 million children repeated Grades I-VIII in 2004; of these 60 per cent were due to failure and 26 per cent due to long periods of absence. In terms of school facilities, 49 per cent of all elementary schools do not have a boundary wall, 31 per cent do not have *pucca* buildings,⁶ 13 per cent (120,474 schools) have only one teacher,⁷ three-quarters of them do not have an electricity connection and 9.5 per cent (88,577 schools) do not even have a blackboard. Teacher qualifications are low; anecdotal evidence abounds of them engaging in discriminatory practices, illegal fee-charging, negligence of their students, corporal punishment and other derelictions of duty. The national teacher absenteeism rate is 25 per cent, though it is much worse in some States. Even when present, they have been found to be teaching only 60 per cent of the time. An added dimension to all these statistics is that a considerable rural-urban divide exists in elementary schooling. For instance, the average number of rooms in a rural elementary school is 3.3, whereas an urban one has 6.7; 64 per cent of urban schools have electricity, compared to 20 per cent of rural schools. Similar inequalities exist on almost every indicator, revealing that the basic needs of equity are going unmet in a country where 87 per cent of its elementary schools are in rural areas.

How does the Right to Education Bill intend to ensure quality in the system? Three systemic issues that emerge in relation to this question will be discussed below. They are: private schools, teachers, and the curriculum.

Private Schools

In recent years the phenomenon of private schooling has taken on considerable proportions in our country. DISE data shows that the share of government-managed schools in elementary education fell from 86.44 per cent to 85.27 per cent in the space of one year, from 2002-03 to 2003-04, while the share of privately managed schools increased from 11.7 per cent to 13.51 per cent. In the same period, the share of private unaided schools grew from 6.74 per cent to 7.76 per cent. A host of other recent evidence points to the private sector boom in elementary education, which is a result

⁶ 4 per cent do not even have a building.

⁷ Bear in mind that the average school size is 154 students.

of the lack of rules governing recognition in some States, the abysmal state of government schools in many areas, and the surge in demand for English-medium instruction among the poorer sections of the population.

The main concerns about private schooling today are to do with recognition and regulation. A recent study in seven districts of Punjab discovered that a quarter of the elementary schools in the districts were unrecognised and a quarter of all pupils were enrolled in them. The study also revealed that compared to recognised schools, unrecognised schools had more and better qualified teachers (academically, not professionally), more classrooms, computers, toilets, electricity connections and drinking water facilities. Furthermore, the percentage of children finishing Class V and Class VIII with more than 60 per cent marks was higher in unrecognised schools. It is therefore clear that qualitatively private schools – especially those that are unaided and unrecognised – are ahead of government schools. However, one must be clear that unrecognised and unregulated schools are not the cure for India’s education ills. In the recent past the media has highlighted the hazardous conditions in which some of these institutions operate, often endangering the health and lives of their students. Moreover, students who study in unrecognised schools are not permitted to appear for public examinations. There also exists the problem of capitation fees among private schools in general, both recognised and unrecognised. High demand allows them to charge exorbitant amounts from parents who choose not to send their children to local government schools.

Any legislation on the right to education needs to tackle the issues highlighted above, or else it will fail to capture fully the scope of elementary education in India⁸. The Right to Education Bill does not fare well on this count. Section 14(1)(iii) states that unaided schools are to extend free elementary education (via both regular classes and special programmes if required) to children belonging to weaker sections up to at least 25% of total enrolment. Section 14(2) goes on to state that “the appropriate government shall reimburse to the school at a rate equal to the per child expenditure in state schools/fully aided schools...or the actual amount charged per student by such school, whichever is less...” The rate per child in a government school will inevitably be less than the rate per child in a private school since, as established above, private schools provide more and better facilities. Therefore if the government chooses to reimburse the private school at a rate lower than what it is spending per child enrolled free, then the school will do one of two things – either it will transfer the cost-burden to its fee-paying students or it will illegally sell the reserved free seats to the highest bidders, effectively instituting capitation fees (presuming the same are not already being demanded by the school). Doing the former is likely to affect demand; therefore it is more likely that private schools will resort to capitation fees in order to meet the cost of providing free education to 25 per cent of their students.

Section 17 lays down the rules pertaining to recognition. After the commencement of the Act, no school shall be permitted to function without recognition from a government-appointed Competent Authority. Each State is directed to notify rules governing the grant of recognition. Moreover, no school shall be recognised unless it conforms to the norms set down in the Schedule to the Act. If a school other than a

⁸ For example, it was found in the Punjab study that more than 37 per cent of officially ‘out-of-school’ children were actually enrolled in unrecognised schools.

State school or fully-aided school fails to conform, it will be derecognised. The penalty for operating an unrecognised or derecognised school will be a one-time fine of up to one lakh rupees and subsequently ten thousand rupees for every day of continued contravention of the Act. For existing recognised private schools that do not conform to the norms, the appropriate government may provide financial assistance to enable them to do so. Now while it is undeniable that unrecognised schools need to be recognised and regulated, the provisions of Section 17 seem to be designed to make it extremely hard for them to function at all. The reason so many unrecognised schools flourish in certain states is because there are few or no rules governing recognition. This makes it easy to set up a school without having to comply with any norms pertaining to infrastructure or safety. In States where rules are in place, many unrecognised schools eschew them by bribing school inspectors and other officials of the education department. Therefore a regime that makes recognition mandatory and puts such a high penalty on non-compliance will further encourage a 'Licence Raj' system to operate in the sector, especially if recognition (as it seems) is at the discretion of the Competent Authority.

Both the above provisions symbolise the government's ignorance of the signals emanating from the growing strength of market forces in education. Instead of dealing with the competition offered by such schools in a constructive manner, the government seems set to take up protectionist measures like exempting its own schools (and fully-aided ones) from de-recognition in case of non-compliance with the norms of the Act. The growing demand for English instruction and the massive shift to private schooling in some States are not the creations of private school owners – they are simply suppliers responding to the changing nature of demand. The real message the government needs to appreciate from this experience is the need to improve the quality of its own schools, maybe by introducing a stronger English curriculum or fundamentally reforming teacher training methods. The attitude it adopts towards private schools (recognised or otherwise) needs to be one of partnership, not confrontation. A cross-pollination of cultures between the two types of management and ownership can be nothing but beneficial for elementary education in our country.

Teachers

The Bill's provisions regarding teachers are again indicative of a certain visual impairment on the part of the government. A number of issues arise on this account. Firstly, Section 21 states that "no teacher shall engage in any teaching activity for economic gain". This is explicitly designed to eradicate the pernicious phenomenon of private tuition and the negative impacts it has on equity. However, to simply ban teachers from providing a service that is in high demand from parents is short-sighted. One has to tackle the root of the problem and that is the complete lack of faith of parents in the quality of the education system. Indeed part of the problem also is the poor-quality teaching deliberately imparted by many teachers who wish to drive demand for private tutoring, but to censure only the teachers without concurrently taking steps to instil faith among parents and students is to completely miss half the problem. The lesson again is one of quality, which is the only way government schools can gain the confidence of parents.

Secondly, the most important issue when it comes to education quality is teacher motivation. Therefore any legislation that calls itself the Right to Education Act must

institute provisions to boost teacher motivation. On the contrary, the current Bill not only ignores teacher motivation, it also threatens teacher rights. For example, the School Management Committee is authorised to supervise, remunerate, regulate, and discipline teachers. While giving the SMC this much authority over teachers might be a good way to create micro-level accountability, the intent of these provisions is revealed by Section 28, which makes it the duty of the SMC to also redress teachers' grievances to the extent they fall within its purview. Therefore within the microcosm of an elementary school, the SMC seems to be able to exercise complete control over the teachers, to the extent that even if a teacher is aggrieved by an order of the SMC, she is required by law to turn back to the SMC for its redressal. No doubt many teachers are members of unions that can protect their interests, but even for these teachers a lack of autonomy as per the Act would negatively affect motivation levels. This is an outcome that the Bill's drafters have possibly not taken into account.

Lastly, there is the contentious issue of transfers that the Bill aims to deal with. Transfers are a political tool used by both teachers and politicians to their advantage. Patron-client relationships flourish through the medium of transfers, which make it incredibly difficult for parents to hold teachers accountable. Section 23 of the Bill states that the teachers of government schools are to be a school-based cadre, i.e. they shall be appointed by the Local Authority or SMC in charge of the school and shall not be transferred thereon. Existing teachers in government schools shall be permanently assigned to a specific government school within two years of the commencement of the Act, in accordance with procedures to be prescribed by State governments. While such measures are theoretically useful for dealing with the problems presented by the institution of transfers, they are likely to result in a significant political backlash from teachers and legislators at all levels. If implemented, they will significantly affect teacher motivation and might even lead to attrition of the cadre. Moreover, the impacts on equity will be tremendous – in the case of existing teachers, if the method of permanently assigning them is not based on random selection, it will result in a politically charged race for appointments to schools or regions that are most likely to offer them a comfortable life for the remainder of their tenure. Inevitably schools in backward areas or schools with inferior facilities and funds will lose out. The same applies in the case of recruitments – potential applicants will aim at schools with more funds and facilities. Teachers who get left behind in this process and take up jobs in difficult areas out of compulsion will suffer from low motivation levels, being faced with no prospects of change in their jobs, especially since Section 24(3) of the Bill bans even the deputation or temporary deployment of teachers to other schools. This might lead to attrition and a subsequent lack of manpower in the sector, especially for schools in backward areas. All these are serious considerations that accompany a no-transfers policy and evidently they have not been completely considered in the Bill.

Curriculum

The curriculum and the manner in which it is taught is an extremely important quality consideration – it is here that institutional checks can be put in place to ensure that children receive a complete education (not just content-based but also competency-based) in a child-friendly environment. To that extent there is an observable commitment in Section 29 of the Bill, which lays down conditions regarding the values, content and transaction of elementary education. These include an emphasis on functioning in a child-friendly and child-centred manner, allowing a child to form

and express her own opinions, building on her knowledge, environment and cultural identity and develop her talents and mental and physical abilities to their fullest potential, teaching in the child's mother tongue, using activity, discovery, exploration etc., creating a teaching environment free of fear, trauma and anxiety, and conducting learner evaluation in a continuous and comprehensive manner. Section 31 prohibits corporal punishment and Section 32 requires the NCTE to be guided by Section 29 in designing its teacher-training curriculum.

These provisions, while noble in intention and crucial to improving quality, are not new. They have been part of education policy lore at least since 1986. Some of the proposals in the 1986 policy that aimed at quality improvement included the adoption of a child-centred and activity-based approach to primary education, improvements in recruiting standards for teachers and an overhaul of the teacher education system. The 1992 Plan of Action, based on a constructive review of the 1986 Policy, put great emphasis on Minimum Levels of Learning – certain standards associated with each level of elementary education that emphasised competence over content and promoted the implementation of continuous and comprehensive evaluation as a diagnostic tool for teachers and to facilitate remedial teaching.

However, since 1986 very little has been done to actually achieve these objectives. Our policies are making education more available and accessible, but neither more acceptable nor adaptable. For example, teacher training and education has been a major part of the quality drive in our policy, yet the CABE Committee report on the Free and Compulsory Education Bill, which was published in July this year, admits that as per MHRD sources at least 50% of professional, technical and support staff positions are lying vacant in existing District Institutes of Education and Training (DIETs) – this amounts to roughly 18 positions per DIET. Moreover, Quality control relies on regular checks and inspections, yet only 57% of elementary schools were inspected by a Cluster Resource Centre in the academic year 2002-2003. If we have not been able to improve quality in these (and other) ways over the last two decades, can one realistically expect the education system to change significantly after the commencement of the Act?

IV Policy and Law

The answer lies in the difference between policy and law. The latter is legally enforceable. Therefore, the government's negligence or shortcomings on these and all other counts of elementary education covered by the Act can be rectified through judicial intervention. In fact, the Bill gives the National Commission for Elementary Education the powers of a civil court trying a suit in its function as an ombudsman for the grievances of parents and citizens relating to elementary education. At the school level, those with grievances can write to the SMC or Local Authority. If not satisfied with their response, the complainant can approach a State Level Regulatory Authority (if created by the respective State government). If this fails then the next step is to approach the National Commission.

While these provisions seem satisfactory, their wording reflects a crucial weakness both in the language of the Bill and in the philosophy behind it. By speaking of the grievances of 'parents and citizens' and not specifically of children, the Bill highlights

its fundamental flaw – the lack of a proper child focus. The right being guaranteed in the Bill is for children, but the provisions of the Act do not take into account that children, not just their parents, are the primary stakeholders in the education process. Often even parents are not completely aware of or sympathetic to the needs and rights of their children⁹. Therefore to leave school-related functions in the hands of the SMC and to design a grievance redressal mechanism for parents and citizens is to leave children out of the picture completely. This is especially myopic considering that quality in education can only be measured by reflecting on the experiences and views of the recipients of that education. The government can train as many teachers as well as it wants, but until there is a mechanism for the voice of the children to be heard, we will not know how effective our policies and laws have been.

And that is precisely the point of making the right to education a fundamental right – to give those without a political voice a legal claim on the government. Not allowing any procedures for these claims to be made or even concerns to be expressed is to deny the fundamental right from its very inception. A more just, equitable and child-centred law would make provisions for redressing the grievances of children – for example, by training at least one female teacher per school in all aspects of child welfare and psychology so she may act as counsellor for the students, or by linking children directly with imaginative government initiatives like CHILDLINE, the children’s helpline run by the Ministry of Social Justice and Empowerment in collaboration with civil society. It is only when we give our children the voice to exercise their rights that we can obtain a true picture of the system, especially in the realm of quality which, as we have seen, is a crucial factor in our current educational landscape. A Bill that embodies a commitment to providing only free and compulsory education is destined to make this fundamental error.

Bibliography

- *A Right Full of Wrongs* (India Together, 05 October 2005)
- *Challenge of Education: A Policy Perspective* (Ministry of Education, 1985)
- *Education For All Global Monitoring Report 2005* (UNESCO, 2005)
- *Elementary Education in India: Analytical Report* (NIEPA, 2005)
- *Elementary Education in Unrecognised Schools in India: A Study of Punjab based on DISE 2005 data* (A.C. Mehta, NIEPA, 2005)
- *Free and Compulsory Education Bill 2004* (MHRD, 2004)
- *Free and Compulsory Education Bill, 2004* (S. Balagopalan, *EPW*, Aug 2004)
- *Free and Compulsory Education: Legislative Intervention* (J.B.G. Tilak, *EPW*, Feb 2004)
- *Free and Compulsory Education: The gap between promise and performance*, (K. Tomaševski, RTE Project, 2001)
- *Human Rights Obligations – making education available, accessible, acceptable and adaptable*, (K. Tomaševski, RTE Project, 2001)
- *Indian Education: Developments Since Independence* (M. Mukhopadhyay and M. Parhar, 1999)

⁹ It must be noted that the issues of parental responsibility and child labour have not been dealt with in this article. They are important issues that deserve more attention than can be afforded by a broad overview of the Bill.

- *Ministry of Human Resource Development: Annual Report 2004-05* (MHRD, 2005)
- *National Policy on Education 1986* (Ministry of Education, 1986)
- *Punjab: Private Lessons* (*The Outlook*, 25 April 2005)
- *Quality Concerns in Primary Education* (Y. Aggarwal, NIEPA, 2001)
- *Removing obstacles in the way of the right to education*, (K. Tomaševski, RTE Project, 2001)
- *Report of the Central Advisory Board of Education (CABE) Committee on Free and Compulsory Education Bill and Other Issues Related to Elementary Education* (2005)
- *Thinking Differently* (*The Hindu*, 13 April 2002)
- *Why School Teachers are Demotivated and Disheartened* (V. Ramachandran, *EPW*, May 2005)
- *Withering Commitments and Weakening Progress* (P. Jha, *EPW*, August 2005)