

Ajay Shah's blog

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The Right to Education Act: A critique

by Parth Shah.

The 'Right of Children to Free and Compulsory Education Act 2009' (RTE Act) came into effect today, with much fanfare and an address by Prime Minister Manmohan Singh. In understanding the debates about this Act, a little background knowledge is required. Hence, in this self-contained 1500-word blog post, I start with a historical narrative, outline key features of the Act, describe its serious flaws, and suggest ways to address them.

Historical narrative

After independence, Article 45 under the newly framed Constitution stated that *The state shall endeavor to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.*

As is evident, even after 60 years, universal elementary education remains a distant dream. Despite high enrolment rates of approximately 95% as per the Annual Status of Education Report (ASER 2009), 52.8% of children studying in 5th grade lack the reading skills expected at 2nd grade. Free and compulsory elementary education was made a fundamental right under Article 21 of the Constitution in December 2002, by the 86th Amendment. In translating this into action, the 'Right of Children to Free and Compulsory Education Bill' was drafted in 2005. This was revised and became an Act in August 2009, but was not notified for roughly 7 months.

The reasons for delay in notification can be mostly attributed to unresolved financial negotiations between the National University of Education Planning and Administration, NUEPA, which has been responsible for estimating RTE funds and the Planning Commission and Ministry of Human Resource and Development (MHRD). From an estimate of an additional Rs.3.2 trillion to Rs.4.4 trillion for the implementation of RTE Draft Bill 2005 over 6 years (Central Advisory Board of Education, CABE) the figure finally set by NUEPA now stands at a much reduced Rs.1.7 trillion over the coming 5 years. For a frame of reference, Rs.1 trillion is 1.8% of one year's GDP.

Most education experts agree that this amount will be insufficient. Since education falls under the concurrent list of the Constitution, financial

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negotiations were also undertaken between Central and State authorities to agree on sharing of expenses. This has been agreed at 35:65 between States and Centre, though state governments continue to argue that their share should be lower.

Overview of the Act

The RTE Act is a detailed and comprehensive piece of legislation which includes provisions related to schools, teachers, curriculum, evaluation, access and specific division of duties and responsibilities of different stakeholders. Key features of the Act include:

1. Every child from 6 to 14 years of age has a right to free and compulsory education in a neighborhood school till completion of elementary education.
2. Private schools must take in a quarter of their class strength from 'weaker sections and disadvantaged groups', sponsored by the government.
3. All schools except private unaided schools are to be managed by School Management Committees with 75 per cent parents and guardians as members.
4. All schools except government schools are required to be recognized by meeting specified norms and standards within 3 years to avoid closure.

On the basis of this Act, the government has framed subordinate legislation called model rules as guidelines to states for the implementation of the Act.

A critique

The RTE Act has been criticised by a diverse array of voices, including [some of the best economists](#). MHRD was perhaps keen to achieve this legislation in the first 100 days of the second term of the UPA, and chose to ignore many important difficulties of the Act. The most important difficulties are:

Inputs and Outcomes

The Act is excessively input-focused rather than outcomes-oriented. Even though better school facilities, books, uniforms and better qualified teachers are important, their significance in the Act has been overestimated in the light of inefficient, corrupt and unaccountable institutions of education provision.

School Recognition

The Act unfairly penalises private unrecognised schools for their payment of market wages for teachers rather than elevated civil service wages. It also penalises private schools for lacking the infrastructural facilities defined under a Schedule under the Act. These schools, which are extremely cost efficient, operate mostly in rural areas or urban slums, and provide essential educational

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services to the poor. Independent studies by Geeta Kingdon, James Tooley and ASER 2009 suggest that these schools provide similar if not better teaching services when compared to government schools, while spending a much smaller amount. However, the Act requires government action to shut down these schools over the coming three years. A better alternative would have been to find mechanisms through which public resources could have been infused into these schools. The exemption from these same recognition requirements for government schools is the case of double standards -- with the public sector being exempted from the same 'requirements'.

School Management Committees (SMCs)

By the Act, SMCs are to comprise of mostly parents, and are to be responsible for planning and managing the operations of government and aided schools. SMCs will help increase the accountability of government schools, but SMCs for government schools need to be given greater powers over evaluation of teacher competencies and students learning assessment. Members of SMCs are required to volunteer their time and effort. This is an onerous burden for the poor. Payment of some compensation to members of SMCs could help increase the time and focus upon these. Turning to private but 'aided' schools, the new role of SMCs for private 'aided' schools will lead to a breakdown of the existing management structures.

Teachers

Teachers are the cornerstone of good quality education and need to be paid market-driven compensation. But the government has gone too far by requiring high teacher salaries averaging close to Rs.20,000 per month. These wages are clearly out of line, when compared with the market wage of a teacher, for most schools in most locations in the country. A better mechanism would have involved schools being allowed to design their own teacher salary packages and having autonomy to manage teachers. A major problem in India is the lack of incentive faced by teachers either in terms of carrot or stick. In the RTE Act, proper disciplinary channels for teachers have not been defined. Such disciplinary action is a must given that an average of 25 percent teachers are absent from schools at any given point and almost half of those who are present are not engaged in teaching activity. School Management Committees need to be given this power to allow speedy disciplinary action at the local level. Performance based pay scales need to be considered as a way to improve teaching.

25% reservation in private schools

The Act and the Rules require all private schools (whether aided or not) to reserve at least 25% of their seats for economically weaker and socially disadvantaged sections in the entry level class. These students will not pay tuition fees. Private schools will receive reimbursements from the government calculated on the basis of per-child expenditure in government schools. Greater clarity for successful implementation is needed on:

- How will 'weaker and disadvantaged sections' be defined and verified?

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- How will the government select these students for entry level class?
- Would the admission lottery be conducted by neighbourhood or by entire village/town/city? How would the supply-demand gaps in each neighbourhood be addressed?
- What will be the mechanism for reimbursement to private schools?
- How will the government monitor the whole process? What type of external vigilance/social audit would be allowed/encouraged on the process?
- What would happen if some of these students need to change school in higher classes?

Moreover, the method for calculation of per-child reimbursement expenditure (which is to exclude capital cost estimates) will yield an inadequate resource flow to private schools. It will be tantamount to a tax on private schools. Private schools will end up charging more to the 75% of students - who are paying tuitions - to make space for the 25% of students they are forced to take. This will drive up tuition fees for private schools (while government schools continue to be taxpayer funded and essentially free).

Reimbursement calculations should include capital as well recurring costs incurred by the government.

By dictating the terms of payment, the government has reserved the right to fix its own price, which makes private unaided schools resent this imposition of a flat price. A graded system for reimbursement would work better, where schools are grouped -- based on infrastructure, academic outcomes and other quality indicators -- into different categories, which would then determine their reimbursement.

What is to be done?

The RTE Act has been passed; the Model Rules have been released; financial closure appears in hand. Does this mean the policy process is now impervious to change? Even today, much can be achieved through a sustained engagement with this problem.

Drafting of State Rules

Even though state rules are likely to be on the same lines as the model rules, these rules are still to be drafted by state level authorities keeping in mind contextual requirements. Advocacy on the flaws of the Central arrangements, and partnerships with state education departments, could yield improvements in atleast some States. Examples of critical changes which state governments should consider are: giving SMCs greater disciplinary power over teachers and responsibility of students's learning assessment, greater autonomy for schools to decide teacher salaries and increased clarity in the implementation strategy for 25% reservations. If even a few

States are able to break away from the flaws of the Central arrangements, this would yield demonstration effects of the benefits from better policies.

Assisting private unrecognized schools

Since unrecognized schools could face closure in view of prescribed recognition standards within three years, we could find ways to support such schools to improve their facilities by resource support and providing linkages with financial institutions. Moreover, by instituting proper rating mechanisms wherein schools can be rated on the basis of infrastructure, learning achievements and other quality indicators, constructive competition can ensue.

Ensure proper implementation

Despite the flaws in the RTE Act, it is equally important for us to simultaneously ensure its proper implementation. Besides bringing about design changes, we as responsible civil society members need to make the government accountable through social audits, filing right to information applications and demanding our children's right to quality elementary education. Moreover, it is likely that once the Act is notified, a number of different groups affected by this Act will challenge it in court. It is, therefore, critically important for us to follow such cases and where feasible provide support which addresses their concerns without jeopardizing the implementation of the Act.

Awareness

Most well-meaning legislations fail to make significant changes without proper awareness and grassroots pressure. Schools need to be made aware of provisions of the 25% reservations, the role of SMCs and the requirements under the Schedule. This can be undertaken through mass awareness programs as well as ensuring proper understanding by stakeholders responsible for its implementation.

Ecosystem creation for greater private involvement

Finally, along with ensuring implementation of the RTE Act which stipulates focused reforms in government schools and regulation for private schools, we need to broaden our vision so as to create an ecosystem conducive to spontaneous private involvement. The current licensing and regulatory restrictions in the education sector discourage well-intentioned 'edupreneurs' from opening more schools. Starting a school in Delhi, for instance, is a mind-numbing, expensive and time-consuming task which requires clearances from four different departments totaling more than 30 licenses. The need for deregulation is obvious.

Please support our efforts towards ensuring Right to Education of Choice through some of the activities suggested above. Join our [RTE Coalition](#).

at 9:07 PM

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