

Are public-private partnerships the way to achieve the right to education in India?¹

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The Government of India recently passed a landmark Right to Education Act (Government of India, 2009). Its development and entry into force (April 2010) came after sustained popular mobilisation by a wide range of civil society organisations and networks, including teachers' unions. The Indian Constitution now provides free and compulsory education for children between the ages of 6 and 14. It aims to bring out-of-school children into the formal education system, and there is a special effort to include children from disadvantaged groups and those with disabilities. The Act also focuses on improving the quality of teaching and learning. While these measures are noteworthy, another potentially controversial measure has also been advanced – support for public-private partnerships (PPPs) in the delivery of education.

PPPs in Indian education are not new. The government has been providing financial support to private schools since the 1960s (World Bank, 2003). The 11th Five Year Plan (2007–2012) proposed multiple options for the entry of non-state providers in order to help strengthen the education system and mobilise additional resources (Government of India, 2007). Though unsurprising, the rapid increase of PPPs in education is remarkable. In 2010, nearly 60 per cent of all secondary schools and 20 per cent of elementary schools in India were government aided or strictly private (World Bank, 2009). They range from fully private initiatives to community schools run by non-governmental organisations (NGOs), or a combination of the two, such as schools run by private actors but partly supported by the state, and low fee-paying private schools. This vast landscape of educational provision makes it difficult to clearly categorise the different types of schools, and arguably, to monitor discriminatory practices and human rights violations, or to regulate the quality of education offered.

What role for the state in PPP arrangements?

According to human rights covenants, governments are obliged to respect, protect and fulfil the right to education (International Covenant on Economic, Social and Cultural Rights (CESCR), General Comment (GC) 13: §48). As the main duty bearer and provider of education, the state must provide good quality free schooling to all children, and ensure that there is no discrimination in the classroom. Human rights covenants also call for freedom of choice to be offered to families by private providers².

In an environment of multiple providers, the state plays an important *regulatory* role. The state is obliged to ensure that the education offered by different providers (including the state itself) adheres to human rights standards and principles (CESCR GC 13: §46 and §48, and the 1989 Convention on the Rights of the Child,

CRC). States must thus guarantee that all education, regardless of the provider, promotes the full development of the individual, supports effective participation in society, advances respect for human rights, tolerance and understanding, and is non-discriminatory (CESCR GC 13: §54; OHCHR, 2002 and 2004).

In other words, all providers must adhere to the indivisible principles that education should be:

- Compulsory and available free of cost
- Accessible to all without discrimination
- Acceptable in terms of good quality teachers, curriculum and facilities
- Adaptable to all contexts to include group diversity (Tomasevski, 2001)

To facilitate access of marginalised groups to PPP schools, India's education legislation requires that private schools give 25 per cent of school places to randomly selected students from 'the weaker sections of society' (Government of India, 2009). However, in practice, this choice is rarely available to children from marginalised and excluded groups because of the cost of schooling, the location of the school or general lack of infrastructure regulations to cater for children's diverse needs (Mehrotra and Pancharukhi, 2007; Härmä, 2010). De and Samson (2009) and Tilak (2010) argue that the scarce resources are being drained from state schools in support of a discriminatory system of private schools. Nor do many of these schools offer better quality of education than state schools – an evaluation carried out in 1999 by the Public Report on Basic Education in India (PROBE) found that 80 per cent of teachers hired by PPP schools were untrained. As a result, state schools now face the risk of becoming 'ghettos' for poor and marginalised groups.

Critiques of this PPP movement are also concerned that the weak and unaccountable regulatory system of private schools could lead to misappropriation of funds transferred as subsidy for the 25 per cent quota (Latham, 2002; LaRocque *et al*, 2010). Experience shows that many private schools have ignored government regulations (including government orders and court verdicts) and are operating through what has been described as a 'shadow institutional framework' parallel to the existing government systems (Srivastava, 2008).

Drivers of the PPP 'trend'

Proponents of greater private involvement in education suggest that the competition created by these different providers makes them more cost-efficient than government schools (Chubb and Moe, 1990; Hanushek *et al*, 1994). They argue that PPPs successfully lower the burden on the state's limited resources, offer

greater choice to parents, especially from marginalised groups (for example, through school voucher schemes), and improve the quality of education partly by enabling parents to hold schools more accountable (Patrinos *et al.*, 2009; Belfield and Levin, 2002; Tooley, 2001). However, Härmä (2010) concludes that even low fee-paying schools in India discriminate rather than create choice by 'leaving behind those of low caste or minority religion, the landless, girls, and children born later in families and children of larger families... Marketised options are neither sustainable in the context of remote rural villages, nor are they, most importantly, socially equitable.'

The rise of PPPs has been made possible through the neoliberal policies advocated by the international financial institutions, such as the World Bank and the International Monetary Fund (Ahmad in Zaidi, 2006). Over time, free market competition has eroded the role of the state, reduced state intervention, and weakened its power and capacity to regulate policies that promote and ensure the fulfilment of citizens' rights. Ahmad argues that choice in this context is likely only to be beneficial to those groups who can afford to purchase it – in other words, those with the financial means and not the poor and marginalised. Ahmad further argues that: 'Displacing and reinterpreting knowledge under these conditions raises many fundamental questions, from the purpose of education to the content, and the ethical obligation to make knowledge freely available to those who seek it. Moreover, defining education institutions... simply as "service providers" – bending before the rewarding contact – is an unacceptable constriction upon the responsibility to society.'

Relegating the dominant neoliberal approach in favour of human rights appears difficult. Research shows how neoliberal policies continue to prioritise macro-economic stability (as defined by fiscal austerity and monetary prudence) over human development (Ron-Balsera, 2011; Marphatia, 2010; Marphatia *et al.*, 2007; Rowden, 2005). However, human rights covenants do recognise that institutions associated with education, whether directly or indirectly, must also '...pay greater attention to the protection of the right to education in their lending policies, credit agreements, structural adjustment programmes and measures taken in response to the debt crisis' (CESCR GC 13: §60).

Conclusion

In conclusion, while in some cases PPP providers offer greater access to education, this non-state provision still presents many risks, particularly the lack of sustainability and systematic organisation. In some instances, it even creates a burden on the poorest and excluded members of the community (Rose, 2007). Given the growing number of PPPs in many countries, like India, the state must play an effective regulatory role over all providers, particularly to monitor that excluded groups are not further marginalised (CESCR GC 13: §46 and §48 and the CRC). The fundamental question that remains is whether the state's obligation and duty to provide education is being eroded by a growing multi-provider environment.

Endnotes

- 1 This article draws upon a co-authored chapter in S. Robertson, K. Mundy and A. Verger (eds), *The Global Governance of Education and Market Multilateralism*, Edward Elgar Publishing, 2010.
- 2 The General Comment No. 13 of the CESCR states that one of the aspects of the right to education freedom (CESCR art. 13.3) refers to the fact that 'State parties undertake to respect the liberty of parents and guardians to ensure the religious and moral education of their children in conformity with their own convictions' (CESCR GC 13: §28). Likewise, 'The second element of article 13 (3) is the liberty of parents and guardians to choose other than public schools for their children, provided the schools conform to "such minimum educational standards as may be laid down or approved by the State".' This has to be read with the complementary provision, article 13 (4), which affirms 'the liberty of individuals and bodies to establish and direct educational institutions, provided the institutions conform to the educational objectives set out in article 13 (1) and certain minimum standards' (CESCR GC 13: §29).

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18th Conference of Commonwealth Education Ministers (18CCEM)

- Host:** Government of Mauritius
- Theme:** Education in the Commonwealth: Bridging the gap as we accelerate towards achieving internationally Agreed Goals (IAGs)
- Date:** 28–31 August 2012

The conference theme seeks to address both the Millennium Development Goals (MDGs) and Education for All (EFA) targets. The 18CCEM will cover a broad range of educational issues including Early Childhood Education and Development (ECE/D), Information and Communication Technology (ICT) in strengthening the delivery of education, skills development and Technical and Vocational Education and Training (TVET), and the overall quality of education across the Commonwealth. The Conference will examine progress made in the areas identified by Ministers at the 17CCEM in Kuala Lumpur in 2009, and will explore trends and innovative practices in Commonwealth Education.

A key feature of CCEMs will be the parallel forums which takes place parallel to the main meeting of Commonwealth Ministers. 18CCEM will include: Stakeholder Forum (for civil society, academia and the private sector), Youth Forum, Teachers' Forum, and Post Secondary and Tertiary Leaders Forum (formerly University Vice Chancellors Forum). The Forums will provide an opportunity to convey to Ministers the independent views of the various actors and stakeholders in education, and enable Ministers to interact with key groups and individuals furthering education across the Commonwealth.