

# Realising the right to free and compulsory elementary education in India: an uphill task

Jyotsna Jha

The Right of Children to Free and Compulsory Education Act or Right to Education (RTE) Act, passed by the Indian Parliament on 4 August 2009, made India one of 135 countries to make education a fundamental right of every child. The country had aspired to achieve universal elementary education for all children up to the age of 14 years since the adoption of the Constitution in 1950, with this provision included in Article 45. Successive Indian governments also adopted policies to facilitate this aspiration, but it was still not a justiciable right. By moving the provision to Article 21 and converting it to a fundamental right, the new Act has made the aspiration into a commitment.

The Act has received varied responses: while some consider it a major achievement and a progressive step, many are sceptical about its realisation and many others think it has serious limitations in terms of defining the quality norms. There are still others who think this is the beginning of the process of privatisation in disguise. On the other hand, there are private providers who have been opposing it tooth and nail; they are trying to come to terms with it only after the recent Supreme Court judgment that upheld the provisions against which they had gone to Court. This article is an attempt to analyse the main features of the Act and assess the challenges that it presents for national and sub-national governments. Laws define entitlements, and conversion of the entitlements into real access and use of the right depends both on the seriousness with which the respective governments implement the law and the capabilities of the people to demand the fulfilment of such a right.

## Physical infrastructure and teacher-related issues

The Act defines a number of physical infrastructure and teacher-related norms for a school; these are largely guided by established principles of what is considered desirable for schooling children in that age group. The norms and standards for a school include a building with a separate classroom for every teacher, separate toilets for girls and boys, safe and adequate drinking water for all students, barrier-free access, a playground, a boundary wall, a kitchen shed for midday meals and a library. These are currently a distant dream for a large proportion of government schools in many parts of the country.

However, this still seems a more achievable goal as it involves only financial and not human resources, which are far more difficult. Through this Act, the government has committed itself to a number of provisions that are known to be crucial for ensuring an

enabling environment for quality education at the basic level and yet that it has been reluctant to accept as norms. The teacher-student ratio now cannot go beyond 1:30 at primary (grades 1 to 5) level and 1:35 at upper primary (grades 6 to 8) level. The ratio has to be applied to every school/institution and not as an average in a district or any other geographical unit. This is a major step in the right direction as it would immediately address the issue of skewed distribution of teachers across schools. However, most states do not have well-defined policies for transfer and placement of teachers, and it is a common knowledge that teachers prefer to stay in urban areas and therefore rural schools in remote areas suffer from teacher shortages. Any policy that regulates the placement of teachers would also face opposition from teachers, who form a major interest group because of their sheer numbers.

The Act poses a serious challenge for state governments across the country, especially in deficit states, to have a pool of trained and competent teachers in a short period of time as it also defines the minimum educational and professional qualifications of teachers at various stages of primary and upper primary schooling. While a number of states fulfil the desired RTE norms in terms of qualifications and teacher-pupil ratios, there are many where qualification norms have been deficient. This will be a serious challenge in terms of capacities. The numbers are huge, and states do not have the required number of teacher training institutions to train so many in a short period of time.

The Act has responded to a major complaint of teachers – their deputation for non-teaching duties. Teachers have been the most common government servants to be deputed for all kinds of needs: decennial census, cattle census, Below Poverty Line Survey, elections at all levels, polio vaccination drive, and law and order needs. The RTE Act debars deputation of teachers for any purpose other than the decennial census and elections. But in a federal set-up – and in a situation where education is part of the Concurrent List with the states footing the major salary bill – it is not so simple to implement such provisions. Implementation of the Act is guided by respective state rules, and the RTE rules in a number of states have kept the right to send teachers on duties that are considered ‘desirable’ by the state government.

## Neighbourhood schooling and mixed social classes

One of the main objectives of the RTE Act is to establish the right of the child to schooling at a neighbourhood school. Experiences from other countries, especially the UK and USA, clearly show that



Photo: Commonwealth Secretariat/Victoria Holdsworth

*The exclusion of the 0-6 age group from the Right to Education Act has been fiercely debated, and has special significance for girls*

parents from high-income groups resist sending their children to schools that children from low-income groups are also attending. Both these countries experienced massive shifts in neighbourhoods after the introduction of common school measures, which meant all children irrespective of their race, ethnicity or economic background would be admitted to the same state-funded school. Shifting of neighbourhoods ensured their exclusivity and therefore the exclusivity of children's backgrounds in the schools. Of course, the option to send children to private, fee-paying schools always existed in these countries as well, and those who could afford it often chose to do so. Yet the character of schools in these countries changed as not everyone could afford to move to exclusive neighbourhoods or send their children to private schools. If nothing else, it contributed significantly to changing inter-racial norms and relations, and therefore any such measure is indeed desirable.

The RTE Act is trying to introduce neighbourhood schooling in India not only in state schools but also in fee-paying private schools. It has made it mandatory for all schools except unaided minority schools to reserve 25 per cent of seats at entry stage for children coming from 'weaker sections' and 'disadvantaged groups'. A large number of private schools, especially those serving students from higher income groups, went to court against this provision but lost the case. The opposition to 25 per cent reservation of seats in private schools stems from several arguments, in particular that children from poor neighbourhoods and low-income, low-educated families should not be mixed with those coming from highly educated, high-income families as it would create problems for both sets of children.

On the other hand, the argument for putting together children from varying socio-economic and cultural backgrounds stems from the advantages of exposure to much wider sets of experiences and realities, making children more aware and sensitive as well as capable of dealing with diverse situations and contexts. Therefore, this move should essentially be seen from the perspective of benefiting not only the 25 per cent of children coming from weaker sections but also the remaining 75 per cent of children who face deprivation of another kind in a homogenous classroom. Experiences suggest that affirmative actions of this kind, if managed and nurtured well, can lead to real change in self-perception, aspirations and performance; the challenge lies in managing and nurturing them well. However, there is no denying that this poses a challenge to teachers in terms of choosing pedagogic practices, providing psycho-social support and judging learning achievements. Given the current orientation and ethos of a large number of private schools, this may not be easy. It is a challenge for state schools as well where, though the majority of children nowadays come from poorer background, the teachers are not necessarily sensitive and well equipped to respond to their needs.

### Cash transfers and fees

Another argument against the 25 per cent measure is the fear of interference, because the acceptance of reimbursements is viewed as compromising the independence of unaided schools. Direct cash transfers to students is often suggested as an alternative to this,

where parents could pay the full fee and send their children to whichever school they want. However, cash transfers, though superficially seeming to address free and compulsory education, fail to fulfil that right/entitlement. Less educated and poor parents have alternative uses for cash, and it would be difficult to force them to use the cash for the child's education alone. Also, girls and children with special needs may face social/cultural biases and therefore cash transfers would not necessarily translate into their schooling.

There is also an economic argument against the measure: in most cases, state compensation for children from marginalised groups will not adequately cover the cost and may push up the fees for the rest of the students. Small private schools charging modest fees would not find any difficulty, as the compensation would be sufficient to cover the costs. However, small-scale, low-end private schools that cater to children from the middle class may find it difficult to sustain their profits and therefore would exit the market. This can be viewed as a necessary outcome of a measure that tries to set standards and define the basic rights and entitlements. It may very well be only a short-term outcome as in the long run other players would fill the gap left by those who leave. In any case, the Act also makes states responsible for providing universal access and therefore even if some private schools close down, it should not affect children's access to schooling per se. Private schools have been indiscriminately charging capitation fees of some kind, which is now barred by the RTE Act.

## Equity and lack of discrimination

Equity is an essential element of quality: quality education cannot be achieved without paying adequate attention to equity. Unfortunately, the majority of Indian schools, both private and government, have not necessarily internalised this notion. One of the most significant provisions of the RTE Act relates to explicit references to discrimination, harassment and fear issues. It states that it is the duty of the appropriate government to 'ensure that the child belonging to weaker sections and the child belonging to disadvantaged groups are not discriminated against and prevented from pursuing elementary education on any ground'. Lack of age proof would not be a reason for denial of admission to any child – this is currently a major constraint in urban slums where migrating families find it difficult to produce such certificates. The Act also asserts that no child shall be subjected to physical punishment and mental harassment. Although not mentioned explicitly, physical and mental harassment can and should be interpreted to include all forms of violence, including sexual.

The RTE Act also defines the responsibilities of the school and teachers, which include making the child free from fear, trauma and anxiety and helping the child to express views comprehensively. Although these provisions are crucial, their realisation in letter and spirit calls for a shift in the whole culture and ethos of the school as well as school systems. Given the current orientation of teachers,

head teachers and the whole educational set-up in both private and public systems, this is no mean task. Schools need to be turned into responsive institutions where every child is respected and given full opportunity; this could mean greater attention to those who come from more deprived backgrounds.

## Limitations of the Act

The RTE Act is not without limitations, especially from the perspective of girls' education and promoting gender equality in education. The exclusion of the 0–6 age group from the purview of the Act has been the subject of fierce debate and has special significance for girls. Early Childhood and Care centres have played a positive role in releasing a large number of girls from sibling care and enabling them to continue with their schooling. The Act does not make any overt reference to gender issues or girls; the girl child has been assumed to be included in its emphasis on 'all' and gender has been included only as a dimension that could cause disadvantage in the definition of disadvantaged groups. It misses the historical evidence that the emphasis on 'all' does not necessarily mean emphasis on 'each', and that gender concerns permeate the whole range of education. They affect everyone: girls and boys, poor and rich, differently abled, coming from whichever social background, located anywhere.

The Act mentions child-centred teaching but does not mention critical pedagogy and hence is open to interpretation. It makes continuous and comprehensive evaluation (CCE) compulsory but has also introduced a no-detention policy, which means there is no flexibility in allowing children to take a little longer than the stipulated period in completing a level. Lack of clarity regarding compliance processes and mechanisms at various levels and concentration of powers in the hands of bureaucracy in most cases are also major issues.

## Conclusion

Despite these limitations, there is no doubt that the RTE Act has opened up enormous opportunities to enhance schooling facilities and transform schooling processes to make them more responsive and enabling for every student in India. Some of these limitations can be overcome by interpreting the Act in spirit and not necessarily in letter alone. Also, the Act needs to be perceived as a beginning and not an end in itself.

**Jyotsna Jha** has a PhD in the Economics of Education and is Director of the Centre for Budget and Policy Studies in Bangalore, India. She has also worked with government and international non-governmental organisations in India and as Adviser on Education, Gender and HIV and AIDS at the Commonwealth Secretariat. Dr Jha's previously published work includes *Boys' Underachievement in Education: An exploration in selected Commonwealth countries*.