

CCS LEGISLATIVE ANALYSIS

The Right to Education Bill 2005

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EXECUTIVE SUMMARY

Despite the hard work by the government, the Right to Education Bill 2005 is scarcely better than its precursor, the Free and Compulsory Education Bill 2003. If there is a mission that seems to motivate the Bill, it is to restrict the school choice of parents and of teachers and to expand the layers and powers of the bureaucracy. This is not the Bill that would serve the cause of education.

Between 1991 and 2001, India's literacy rate increased by about 13 percent, from 52 to 65 percent. This is the highest increase in any ten-year period in our history. This was achieved despite an actual decrease in government educational expenditures in the first half of the decade due to the structural adjustment program. Unrecognised private schools for the poor, charging Rs 25 to 200, had come to the rescue. And the Bill assumes that it is helping the poor by outlawing that whole sector.

The centrepiece of the Bill is the model of neighbourhood school or common school. The idea of forcing all children to attend neighbourhood schools gained currency in the United States at the turn of the last century. Disregarding the lessons that the United States has learned, the Bill blindly imitates the century-old US model.

The entire focus of the Bill is on the inputs into the education system—the outlays. It provides very little in terms of the output that is expected—the quality of education and the learning achievements of students.

The Bill seeks to expand access to elementary education by basically two means: one, greatly increase the number of state schools; and two, the minimum 25% reservation of seats in all private schools. Now if the government wants to open more schools, certainly no new law is necessary. So after all the rhetoric, the Bill expects the private sector to discharge the constitutional obligation of the state and it does not lay down any particularly binding duties for the state that would not have existed in the absence of the Bill. Thus on one hand the success of the Bill depends heavily on the capacity addition in the private sector while at the same time the existing regulations and licensing procedures significantly impedes this capacity addition.

The Bill is cleverly ambiguous about the government machinery that would implement many of its provisions. Unlike the earlier Free and Compulsory Education Bill, 2003 that had proposed the creation of up to six different bureaucratic authorities, the present Bill softens the blow by not explicitly creating and naming these authorities. Instead it uses generic and seemingly innocuous phrases like 'competent authority', 'local authority' and 'empowered authority' for different functions under the Bill and leaves for the Rules to designate them.

For private schools, the whole process of attaining recognition from the government is laid out in clear terms. However for state schools no such process is prescribed. So despite the mandate, without any specified recognition process and without any penalty for failure, the state schools that do not meet the standards would be allowed to function. This discriminates against poor students; they go to state schools and for them anything is considered better than nothing.

One justification for the new Bill is that without being legally mandated, the government itself would not be able to commit the resources necessary to universalise elementary education. Earlier many who fought for the fundamental right to education had thought that the passage of such a constitutional amendment would finally compel the government to put out the

resource necessary to fulfil this new fundamental right. They now seem to believe that what the constitutional amendment failed to achieve, would be fulfilled by simply a new law.

On that count also, this Bill is a sham. It is the same reason why the constitutional amendment failed and why this Bill would surely fail: There is no penalty on the government for failure to meet its obligations. Only parents and teachers suffer penalty for dereliction of their duties under the Bill. Moreover, the state teachers further suffer by being tied to the same school for their entire career, in name of creating a school-based teacher cadre. If this is what the Ministry of Human Resource Development offers as a good HR policy, it's time to close it down.

AT A GLANCE

The Right to Education Bill 2005:

- Involves parents in decision making through School Management Committees.
- Relies on the neighbourhood school model, an idea whose time is gone.
- Focuses on the inputs and outlays but not at all on the outputs or outcomes.
- Adds to the layers and powers of the education bureaucracy.
- Promises to add a large number of government schools, but ultimately banks on the reservation of seats in all private schools, aided and un-aided.
- Assumes that private schools can expand their capacity by 25% without any adverse impact, while perpetuating the license raj for opening of new schools.
- Provides no mechanism to ensure that government schools would comply with the minimum infrastructure standards.
- Penalises parents and teachers for dereliction of their duties, but considers government failures as acts of God.
- Ties state teachers to the same school for their entire career in the name of creating a school-based teacher cadre.

Stop the Right to Education Bill, 2005!

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INTRODUCTION

The Free and Compulsory Education Bill 2003 was the first attempt of the Central government to draft a comprehensive legislation on education after the 86th Constitutional Amendment that made education a fundamental right. The Bill was an excellent example of bureaucratic empowerment, creating up to 6 levels of various authorities to ensure the provision of free and compulsory education. Furthermore, the reservation of up to 25% of the private school seats for the economically backward students to be selected by these authorities ensured that the Bill was a throwback to the old licence-permit-raj regime. Following widespread criticism, the Bill was discarded.

The Right to Education Bill 2005 is the second attempt by the Central government to set the education system right. Some of the important provisions of the Bill:

1. Promises free and compulsory education of equitable quality up to the elementary level to all children in the age group of 6 to 14.
2. Mandates unaided private schools to reserve up to 25 percent of the seats for students from weaker sections. The schools will be reimbursed by the lower of the actual school fee or per student expenditure in the government school. The aided schools will reserve "at least such proportion of their admitted children as its annual recurring aid bears to its annual recurring expenses subject to a minimum of 25 per cent."
3. Requires all remaining students to be accommodated by opening new government schools and within three years of the passage all students to have a school to go within their own neighbourhood.
4. Forms School Management Committees (SMCs) comprising parents and teachers for state schools and aided schools. The SMCs will own the assets of the school, manage the accounts, and pay salaries.
5. Establishes a National Commission for Elementary Education to monitor the implementation of the Bill, State Regulatory Authorities to address grievances under the Bill, and several 'competent authorities,' 'local authorities,' and 'empowered authorities' to perform a vast number of regulatory functions and meet out punishment to defaulters.
6. Assigns all state school teachers to particular schools from which they will never be transferred—creates a school-based teacher cadre.

One quick way to assess the Bill is to ask for each of these important provisions, what they suggest about the government's understanding of what ails the Indian education system. The government has crafted these provisions to address the problems that plague our education system. What the government perceives to be the problems can be inferred from these provisions of the Bill.

1. If passed, this will be the first most comprehensive central legislation on education. Does it imply that what was ailing our education system was the lack of central legislation? Was the Centre really detached from education all these years? With the central legislation comes the vast pool of Centre's resources. This means that the Centre was unable to allocate its resources to education until it had made its own commitment through a central legislation.
2. The reservation of seats in private schools and thereby their forced expansion by at least 25 percent implies that one of the problems is the hoarding of excess capacity by these socially irresponsible schools. Or may be the ignorance of private schools about their own latent ability to increase their size by 25 percent is now corrected by the Bill.

3. Despite its best efforts, the government was unable to open more schools so far because of some impediments and these impediments would somehow magically disappear after the Bill, which would enable the government to open so many new schools in three years that no child would be left without a school in her neighbourhood.
4. The creation of School Management Committees does hit the right nail. The lack of parental involvement in school decision-making is certainly a problem, particularly in state schools. But three-fourth of the members are parents. Do we expect parents to actually do day-to-day management and supervision? It seems that from not being involved at all, they are forced into the driver's seat.
5. National Commission on Elementary Education, several new bureaucracies and expansion of the existing ones—we just don't seem to have enough educrats to oil this gigantic education machinery!
6. Once assigned, no state school teacher would be transferred. In an era of multiple jobs during a career, not to mention multiple careers, the government seems to think that by tying a teacher to a school for the rest of her career will improve her performance and morale.

DEAD ON ARRIVAL: BUREAUCRACY SWELLS AND UNRECOGNISED PRIVATE SCHOOLS SMOTHERED

Two most glaring defects of the Bill make it dead on arrival. The main shocking aspect of the Bill is that there is not a word about education ministries and departments. Literally, not a word. Who has been running our education system all these years? There is no reflection about their functioning or performance, let alone evaluation or reforms. The Bill simply adds one more layer of central bureaucracy on the top of all the state education departments and assumes that that all is necessary to get our education machinery moving.

The Bill surprisingly overlooks the spontaneous revolution that has been taking place in elementary education in India in the last decade or so: the private schools for the poor. They are everywhere, from urban slums and middle-class neighbourhoods to our remotest habitations (Kingdon 1986; Aggarwal 2000). They charge about Rs 25 to 200 per month and provide relatively decent quality of education. Detailed studies in Delhi and Hyderabad show that learning achievements of students in these unrecognised private schools for the poor are higher than that of the students in state schools (Tooley and Dixon 2003; Tooley 2005).

Between 1991 and 2001, India's literacy rate increased by about 13 percent, from 52 to 65 percent. This is the highest increase in any ten-year period in India's history. How was this achieved? Was it due to governmental efforts? The overall government expenditure on elementary education was 1.78% of GDP in 1990-91. Under the structural adjustment program of the early 1990s, it declined to 1.65% by 1994-95. Then it gradually rose to 2.02% in 2001-02. Averaging out for the decade of 1991-2001, government spending increased marginally from 1.78 to 1.92 percent of GDP. But the literacy rate jumped by 13 percent.

India's first reform decade is a telling example of how economic growth improves literacy levels despite government's relative apathy. People got the reins of the economy in their hands from the Planning Commission and they produced twice the growth rate than the 3.5 percent Planning-Commission growth rate in the previous four decades. The people, half illiterate as they were in 1991, achieved the miracle that all the wise men of the Planning Commission could not since the independence. And as their incomes expanded, they invested

more in their children's education. Education became one of the fastest growing industries in India. Paradoxically the government does not consider it to be an industry at all.

The Bill has nothing to say directly about these unrecognised private schools for the poor, but by allowing only recognised schools to exist after its passage, it outlaws them and hopes that they will all disappear. The government that can't prevent half of the electricity and water from being stolen or can't close down spurious drug factories thinks that it will be able to banish elementary schools where parents send their children voluntarily, often with a free government school next door. The Bill closes down the whole sector that is really helping India to raise its literacy levels and to improve access and quality of education. What more destruction should the Bill perpetuate on the nation before we send it back to the drawing board?

If there is a mission that seems to motivate the Bill is to restrict the school choice of parents and of teachers and to expand the layers and powers of the bureaucracy. This is not the Bill that would serve the cause of education.

NEIGHBOURHOOD SCHOOLS: AN IDEA WHOSE TIME IS GONE

Section 3 (1) (i) if the Bill provides every child a right to admitted to a neighbourhood school and Section 5 (i) requires the state to ensure the availability of a neighbourhood school for every child within a period of three years from the passage of the Bill. The proviso to the Section mandates the State to provide for free transportation facility to the nearest school or provide free residential facility to a child in case of non-availability of a neighbourhood school.

All state schools and full-aided schools must first admit children from their neighbourhoods. The 25% reserved seats in the partially aided and unaided private schools should also first go to neighbourhood children. This idea of forcing all children to attend neighbourhood schools gained currency in the West, and particularly in the United States, at the turn of the last century. The restriction on the freedom of the parents to choose the best school for their children irrespective of its location was justified to achieve more social harmony. Today however all the educational reforms in the United States—from charter schools to education vouchers—are geared towards expansion of parental choice and thereby towards creation of competition among public schools and at times between public and private schools. Disregarding the lessons that the United States has learned, the Bill blindly imitates the century-old US model.

The Bill views parental choice as a threat to a good education system. In our democracy, we seem to consider the right to choose a politician sacrosanct but not the right to choose a school. Even on practical terms, the US idea of the neighbourhood school made sense when almost everyone went to a government school. We already have a good proportion of students—rich and poor—going to private schools. Unless the government is willing to close down most of the private schools, the restrictions on parental choice would hardly achieve any social homogenisation.

It should also be remembered that the poor parents would be most adversely affected by the limitations on parental choice. They are most likely to send the children to state and fully-aided schools, and only they would be utilising the quota seats in the partially-aided and unaided private schools. The richer parents would always be able to get a school of their choice. The Bill is most likely to achieve the opposite of what it intends. The Hayek's Law of Unintended Consequences seems to defeat government's good intentions!

Fifty years of lack of choice for students and parents in elementary education is the reason for the lackadaisical attitude of the state towards the education of the poor, and this in turn has led to the existing abysmal condition of the state schools. It is difficult to understand the convoluted logic of the Bill to adopt an education model that other countries are working hard to discard. The enforcement of a Constitutional right to elementary education surely should NOT be through a tried, tested and failed education model.¹

RIGHT TO FOOD BILL 2005!!!

The inappropriateness of a model of restricting parental choice can be illustrated by transposing the approach in the hypothetical scenario of the government providing a Bill for the right to free food to children. In the following, selected provisions of the Right to Education Bill 2005, 'education' has been replaced by 'food', 'schools' with 'dhabas' and 'teachers' with 'chefs'. Pause for a moment to think what we are trying to achieve with this Bill. Read on.....

3. Child's Right to Free..... Food of Equitable Quality

(1) Every child who has attained the age of 6 years shall have the right to food and shall have the right, subject to the provisions of this Act, to:

- i) be admitted to a neighbourhood dhaba in accordance with the provisions of Section 14, and*
- ii) be provided free food in such dhaba, in the manner provided in this Act*

5. General Responsibility of the State

It shall be the responsibility of the State:

- (i) To ensure the availability of a neighbourhood dhaba for every child within a period of three years from commencement of this Act;*

14. Responsibility of Dhabas to provide Free Food

(1) Dhabas shall provide free food to children entitled under Section 3 to the extent and in the manner specified below:

- i) State dhabas, except dhabas of specified categories, and fully aided dhabas - to all admitted children.*
- ii) Aided dhabas, other than fully aided dhabas - to at least such proportion of their admitted children as its annual recurring aid bears to its annual recurring expenses subject to a minimum of 25 per cent.*
- iii) State dhabas of specified categories, and un-aided dhabas, to at least 25% children admitted to Class 1 after the commencement of this Act, from among children belonging to weaker sections randomly selected by the dhaba...*

¹ Defining the neighbourhood in terms of a geographical area but ignoring the demographics of the area can lead to another set of problems. For example, up market locations would have more of mid to late career-level professionals who are unlikely to have children of elementary school going age, while cheaper locations would have more of entry- level professionals and families and thus more children of school-going age. Furthermore, this approach would also fail to take into account changes in demographics that may occur over a period of time. Even if the neighbourhood is defined according to the density of children in an area, the problem of demographic changes remains.

10. Responsibility of the Appropriate Government

- (1) Responsibilities in connection with provision of free and compulsory food, except those of the Central Government as defined in Section 9, shall be that of the appropriate Government.
- (2) Without prejudice to the generality of sub-section (1), the appropriate government shall ensure:
- i) Provision of financial assistance to Local Authorities for implementation of this Act in accordance with such formula regarding sharing of costs of such implementation, as the appropriate government may determine from time to time.
 - ii) Carrying out of an exercise every year to determine the requirement of dhabas, facilities and their appropriate locations for the implementation of this Act.
 - iii) Establishment of additional dhabas as required and making them functional.
 - iv) Deployment of chefs in dhabas in accordance with the provisions of this Act...
 - viii) Development and maintenance of a comprehensive database to facilitate implementation of this Act.
 - ix) Creation of adequate facilities for training of chefs and other personnel to meet the human resource requirement for the implementation of this Act.

11. Responsibility of the Appropriate Government to Augment Chef Training Capacity Wherever Necessary

Every appropriate government shall, within six months of the commencement of this Act, assess the State's requirement of professionally trained chefs as prescribed under this Act, vis-à-vis the capacity of existing training institutions, and shall in the event of a deficit, take steps to augment such capacity so as to match the requirement within such period not exceeding five years from the commencement of this Act, as the Central Government may notify.

GUARANTEEING GRADUATION BUT NO EDUCATION

The entire focus of the Bill is on the inputs into the education system—the outlays. It provides very little in terms of the output that is expected—the quality of education and the learning achievements of students.

Section 3 (5) more or less makes it clear that no child is going to be held back in a grade until the completion of elementary education. Section 30 requires that no public examination be conducted, except perhaps, at the completion of elementary education. Section 29, which mentions learner evaluation is vague and does not prescribe the means by which any form of evaluation should be done.

Many support no detention policy on the ground that failing of students at an early age would adversely affect their self-esteem and psychological makeup. But a no-detention policy along with the lack of a proper evaluation system may be one of the primary reasons for the failure of the state elementary education system today.

With no specification of the output, what will the Bill achieve? If the idea is the nominal completion of elementary education, the completely tortuous exercise can be avoided altogether and every child can be given a certificate of completion of elementary education at the age of 14 years irrespective of the level of her learning. The aim of compulsory education would be to equip the child with a certain set of skills that one would normally expect from elementary education. The Bill would be successful primarily in ensuring that every child of

the age of 14 years is the holder of a certificate of completion of elementary education. Aren't we able to achieve this as it is, without a new Bill?

The National Commission for Elementary Education is established with the goal of monitoring the implementation of this Bill and one of the functions of this Commission provided in Section 33 (4) is to monitor the quality of elementary education. But even a cursory reading of the Bill would reveal that there is not a single parameter in the entire Bill that would enable the measurement of the quality of elementary education provided. Therefore, the Commission would busy itself with monitoring the inputs into the education system prescribed in the Bill, in great detail on page after page, like compliance with the infrastructure requirements, formation of the requisite administrative machinery. Thus, the monitoring of the elementary education system as provided in the Bill is hardly likely to evaluate the quality of the education.

The Section 26 lays down the duties of teachers. Yet again, this Section focuses more on the necessary inputs into the system by teachers, like regular attendance, hours of class time, completion of the syllabus. In addition to this, it also mandates regular assessment of the learning level of each child and an appraisal of the progress of the child to parents and the Schools Management Committees (SMCs). But it specifies no standards for assessment.

Section 27 of the Bill seeks to bring in some form of accountability in the teaching system. The Section mandates the SMC/ Panchayat/ Municipal Body as the case may be to furnish periodic assessment report regarding performance of duties stipulated in Section 26 by teachers. Now out of the duties specified in Section 26, the input based duties like the regular attendance of the teachers, the completion of the curriculum, meeting the deadline for the curriculum and reporting cases of non-attendance of students and so on can be quantified and hence assessed by the stipulated authorities for the purpose of submitting a teacher assessment report. But at the same time the teachers' success in the area of specific learning outcomes and overall student development, that is, the output desired by an education system, is largely left for subjective assessment. It is certainly not easy to quantify learning outcomes through one or two parameters, but the Bill does not even try to focus attention on this issue. This is aggravated by the lack of examination/ no detention premise of the Bill.

THE NEW EDUCATION SYSTEM: BUREAUCRUSHED!

The Bill is cleverly ambiguous about the government machinery that would implement many of the provisions of the Bill. Earlier the Free and Compulsory Education Bill 2003 had proposed the creation of up to six different bureaucratic authorities like the Habitation-level Elementary Education Authority (HEEA), Local Elementary Education Authority (LEEAA), District Elementary Education Authority (DEEA), Metropolitan Elementary Education Authority (MEEA), State Elementary Education Authority (SEEA) and Union Territory Elementary Education Authority (UTEAA) to implement and monitor the implementation of its provisions.

This Bill, on the other hand, does not explicitly mention all the new bureaucracies, but if we take into account the envisaged pervasive control of the state in education and some of the stated tasks in the Bill like planning, budgeting, maintenance of records etc. and multiple levels of monitoring for each of these activities, it becomes increasingly clear that various levels of administrative bodies are necessary.

The present Bill softens the blow by not explicitly creating and naming these administrative authorities. Instead it uses generic and seemingly innocuous phrases like 'competent authority', 'local authority' and 'empowered authority' for different functions under the Bill. All

these authorities are to be prescribed or designated in the Rules that would accompany the final Act. Apart from these authorities, the Bill in Sections 14 (3), 17 (4), 46 (2) and 47 (2) prescribes or designates authorities for different functions like collection of information, receiving applications for recognition, conducting inquiries and being a part of the grievance redressal mechanism respectively. Yet again, Bill further defines a 'local authority' to include other authorities as may be prescribed by the Rules.

Thus, the only thing that has changed regarding the issue of increased bureaucratisation is that while the previous Bill had created and designated these authorities in the Bill itself, the present Bill has made mention of these authorities and their functions but has left it for the Rules to give these authorities a proper name. Does anyone really doubt that the Bill would actually increase the seemingly endless bureaucratic hierarchies in the administration of education?

GOVERNMENT SCHOOLS: GUARANTEEING RECOGNITION WITHOUT COMPLIANCE

The Schedule to the Bill describes in detail the minimum standards for a school and the Sections 17 and 18 provide for the recognition and compliance with these standards for state and private schools. It mandates that all existing government schools should comply with the requirements of the Bill in terms of infrastructure and other facilities within a period of three years but it is not clear as to who would be held accountable in case of non-compliance. The Section 18 (3) does place the responsibility to comply with the requirements of the Bill on the Appropriate Government or the Local Authority as the case may be. But responsibility would never amount to accountability in the absence of any sanction mechanism.

For private schools, the whole process of attaining recognition from the government is laid out in clear terms. However for state schools no such process is prescribed. So despite the mandate, without any specified recognition process and without any penalty for failure, the state schools that do not meet the standards would be allowed to function. This is exactly what happens today. A large number of government schools that lack even the basic infrastructure are permitted to continue. This discriminates against poor students; they go to state schools and for them anything is considered better than nothing. The government has a whole pool of inspectors to make sure that those who go to private schools get the prescribed facilities. This discrimination and the poor-should-be-thankful-for-even-government-scrums attitude must be banished.

The poor state of government schools is obvious to all, except the government. The Bill manages to gloss over this monumental failure and the historic discrimination against the poor. Between recognised private schools and government schools, it is the latter that need the heavy-handed regulations and strictures for meeting the minimum standards.

A possible solution to ensure that government schools comply with the requirements would be to give powers to an independent authority to oversee the recognition of schools and compliance with prescribed standards. Furthermore, it should be mandated that even the state schools should follow a procedure similar to private schools in obtaining recognition from this independent authority.

RESERVATION IN PRIVATE SCHOOLS: THE LAST GREAT HOPE

The Bill seeks to expand access to elementary education by basically two means: one, greatly increase the number of state schools (some hint doubling of Centre's current expenditure of Rs 40,000 crores), and two, the minimum 25% reservation of seats in all private schools. Now if the government wants to open more schools, certainly no new law is necessary. It always had the legal powers to do so.

One justification for the new Bill is that without being legally mandated, the government itself would not be able to commit the resources necessary to universalise elementary education. Earlier many who fought for the Fundamental Right to Education had thought that the passage of such a constitutional amendment would finally compel the government to put out the resource necessary to fulfil this new fundamental fight. They now seem to believe that what the constitutional amendment failed to achieve, would be fulfilled simply by a new law.

On that count also, this Bill is a sham. It is the same reason why the constitutional amendment failed and why this Bill would surely fail: There is no penalty on the government for the failure to meet the obligations under the Bill.

So after all the impressive goals and the associated rhetoric, it boils down to the fact that the Bill calls upon the private sector to discharge the constitutional obligation of the state and it does not lay down any particularly binding duties for the state that would not have existed in the absence of the Bill.

Moreover, the Bill assumes that private schools would have excess capacity of 25 percent to take in the increased number of students. This is an unrealistic assumption as there would be no probable reason why a private school would not have already utilized this excess capacity. If the Bill seeks to squeeze in another 25 percent to the existing private schools, this would at the least deteriorate the current standards, thus making it impossible to reconcile this scheme with the proclaimed goal of 'equitable quality' education. Unless of course one views the goal being attained by lowering the existing quality of private schools. In event of the lack of excess capacity, 25 percent of the students of the school would be replaced by students of weaker sections. Where would these displaced students go?

Again the government seems to hope that more private schools would open up to serve these displaced 25 percent of students, particularly since they have the means to pay for private education. And one thing we can be certain about the market is that if there is demand, there will be supply. But what has the government done to assure that new private schools would open as quickly as seems necessary after the passage of the Bill?

The Section 17 (2) requires that in order to open a new private school, a no objection certificate must be obtained from the Competent Authority. While the Bill is silent about the conditions to be met that would satisfy the Competent Authority to provide a no objection certificate, and if the rules framed under this Bill do not provide, the existing rules under individual state legislations on the opening of new schools would be adopted by the Bill. Many of the state education acts have stringent and unduly restrictive licence requirements for new private schools. For example, a study has shown that it requires no less than 17 licences to open a new private school in Delhi (Wadhwa 2001).

To compound the problem, many of the requisites that have to be met for the granting of the licence are reflections of an era of command and control governance. In Delhi one of the conditions that has to be met for the grant of licence to open a private school in an area is

that the certifying authority should be satisfied that there is a need for a new school in that area. This assessment of this need is supposed to be based on a number of other factors like the presence of a government school, population of that area, projected growth, etc. Thus on one hand the success of the Bill depends heavily on the capacity addition in the private sector while at the same time the existing framework regulating education greatly impedes this capacity addition.

PENALTY FOR PARENTS BUT NOT FOR PUBLIC SERVANTS

What was dropped from the 86th Constitutional Amendment of the Fundamental Right to Education has been brought back by this Bill. Section 50 places the responsibility of non-enrolment of a child on the parents, and Section 50 (2) prescribes a penalty of community service for failing to send the child to school.

On the other hand, there is not a single penalty in the entire Bill for any of the government functionaries who may fail to discharge their responsibilities under the Bill. On the top of that, Section 54 provides immunity to the government or any of its functionaries from legal proceedings for anything that is done or intended to be done in good faith. The Section 51 (3) (K) requires that no grievance under the Bill be taken to a court of law without prior authorisation by an appropriate government authority. Parents are to be punished and private parties cannot appeal to the court. However the failure or inaction on the part of the government is treated as an act of God! This we are told is the model of accountable and participatory governance.

TEACHERS: SCHOOL CADRE OR SCHOOL SLAVES?

Among all the stakeholders in education, only two have specific provisions of penalty in case of their failure to perform the stipulated duties: parents and teachers. The parents can be asked to do community service if they fail to send their child to school. However the authority that can assign the penalty—the School Management Committee—has parents as three-fourth of the members.

Two whole sections of the Bill detail what teachers owe to the society: Section 26 'Duties of Teachers,' and Section 27 'Accountability of Teachers employed in State school /Fully aided schools.' In exchange the government school teachers are rewarded by the promise of no transfers. Within two years of the passage of the Bill, all teachers will be assigned to particular schools and then never transferred again (Section 23). The politics of current teacher transfers is undoubtedly damaging to the performance and morale of teachers. But the remedy seems worse than the disease. Imagine starting as a teacher at the age of 25, single and living with parents, and then staying with the same school for the rest of the career. The days of one-life, one-job are long gone. People want to change jobs, and it is also becoming easier to do in our growing economy. Today, people not only change jobs in a given career but change careers themselves. And our Ministry of Human Resource Development thinks that bonded labour is a good HR policy!

One can confidently predict that these provisions would lead to the departure of good teachers from government schools. Many are already eyeing the growing private initiatives in education and the demand from foreign countries. It would turn into a tide particularly if the 25% reservation compels private schools to expand their capacity.

CONCLUSION

The Bill has failed in identifying what actually ails our education system and so not surprisingly it offers solutions that are either redundant or counter-productive. Its unrelenting faith in the bureaucracy and its seething animosity towards private initiatives in education reflect a bygone era. However well-intentioned the government may be, the central planning approach cannot serve the future needs of India. It has failed in economics and it cannot do any better in education. The promises made in the Bill then amount to political grandstanding.

The fulfilment of the constitutional obligation does not necessarily require the state to build and manage schools. It can discharge its obligation successfully by restricting its role to the provision of financial resources to those who cannot afford and enabling all parents to make informed choices. The education system should be designed in such a manner that there is competition and choice. The schools should compete with each other to attract students and the students should in turn have the freedom to choose their school. This would ensure the best allocation of scarce resources and an improving quality of education.

One way for the government to finance education that would guarantee access to school and would create right incentives for improving quality is to fund government schools on the basis of number students in the school. Instead of a lump sum grant, the government fixes a per student charge, which multiplied with the number of students, determines the grant that a school would receive.

The state can also provide financial support to students in the form of a voucher that can be redeemed only at educational institutions to cover the expenses of education. With this education voucher, the student would be in a position to choose from amongst the various public and private schools. This would ensure competition amongst schools and thus good quality education. Furthermore, the financial resources of the state would be put to more effective use by targeting them towards the poor only and by optimally utilizing the management skills of the private sector.

There is no doubt that privately managed institutions have made a tremendous contribution to the cause of education, and in the last decade particularly the unrecognised private schools for the poor. It would be a tremendous loss of social capital if these schools were forced to close down. If the government opens a new school and runs well, there would be no reason for parents to send their children to a fee-charging, unrecognised school. They would go out of business automatically. One more reason not to outlaw these schools with the passage of the Bill is the chaos and harm it would create since they will have to close down well before the government will be able to open new schools across the country. In its zeal to fulfil its constitutional mandate, the government would achieve the opposite.

Instead of treating private initiative as inherently corrupt and exploitative, the government should channel the private enterprise to help expand access and improve quality of education. It has been done with great success in many areas. In telecom, to cite one example, the government was able to give 35 million connections in more than forty years, while the private sector provided 55 million mobile connections in about ten years. The private enterprise can achieve similar feat in education if the government provides the right regulatory and supervisory structure and encourages edupreneurs to serve the cause of education.

This document is primarily an evaluation of the Right to Education Bill 2005, for our ideas for education reforms, see the Education Choice Campaign at www.ccsindia.org.

FURTHER READINGS (accessible at http://www.ccsindia.org/edu_policy.asp)

- Aggarwal, Yash, 2000, Public and Private Partnership in Primary Education in India- A Study of Unrecognised Schools in Haryana, National Institute of Educational Planning and Administration, New Delhi.
- Aiyar, Swaminathan S Anklesaria, 2004, "[Money can't teach kids to read & write](#)", *The Economic Times*, June 1.
- Arora, Shailly, Sruthijith, K K, 2002, [Of Opening Colleges and Obtaining Licences](#), Centre for Civil Society Working Paper No. 0019.
- Braun-Munzinger, Corinna, 2005, [Education Vouchers - An International Comparison](#), Centre for Civil Society Working Paper.
- Centre for Civil Society, 2005, [Education Vouchers - A Concept Note](#), New Delhi.
- Centre for Civil Society, 2004, Readings on Educational Vouchers, New Delhi.
- Das, Gurcharan, 2004, "[Stop Bullying Children](#)", *The Times of India*, January 11.
- Das, Gurcharan, 2005, "[Childhood trials/The Indian Way/Insolent teachers](#)", *The Times of India*, September 11.
- Das, Gurcharan, 2005, "[Missing in Action](#)", *The Times of India*, September 25.
- Gauri, V, Vawda, A 2004. Vouchers for Basic Education in Developing Economies: An Accountability Perspective, *The World Bank Research Observer* 19, no. 2: 259-280. <http://wbpro.oxfordjournals.org/cgi/reprint/19/2/259>, accessed September 14, 2005.
- Gill, S S, 2005, "[Profit and 'education' do go](#)", *The Indian Express*, November 8.
- Kingdon, Geeta Gandhi, 1996, [Private schooling in India: Size, nature, and equity-effects](#), *Economic and Political Weekly* 31, No. 51: 3306-3314.
- Patnaik, Ila, 2004, "[The Cess In Cesspool](#)," *The Indian Express*, August 13.
- Salisbury, D, Tooley, J, eds. 2005, What America Can Learn from School Choice in Other Countries, Washington, D.C.: Cato Institute.
- Shah, Parth J, 2000, [On the Role of Government and Civil Society in Education: Liberalisation, Accountability, and Empowerment](#), Paper In *New Economic Policies for a New India*, edited by Surjit S. Bhalla, New Delhi.
- Shah, Parth J, 2002, "[Liberalise the Education Sector](#)", *The Economic Times*, July 18.
- Shah, Parth J, 2004, [National Education Choice Campaign](#), *EducationWorld*, November.
- Tooley, James, Dixon, Pauline, 2003, [Private Schools for the Poor: A Case Study from India](#) CfBT Research and Development.
- Tooley, James, September 2005, [Private Schools Serving the Poor: A Study from Delhi, India](#), Working Paper.
- Tooley, James, June 2005a, "[Is Private Education Good for the poor?](#)" Working Paper.
- Veetil, Vipin, 2005, Government Expenditure on Elementary and Secondary Education in Delhi from 1993-94 to 2003-04, Centre for Civil Society Working Paper.
- Wadhwa, Mayank, 2001, [Licenses to Open a School: It's All About Money](#), Centre for Civil Society Working Paper No. 0001.