

# Right to Education Act: A Critique

The RTE Act is a mixed bag and some of its serious flaws need to be addressed, say **Parth J Shah** and **Shreya Agarwal**

**T**he Right of Children to Free and Compulsory Education Act 2009 (RTE Act) came into effect on April 1, 2010. Most people know that the Act is important, but otherwise understand very little of what it says. To understand it really requires some background knowledge which this article attempts by providing a historical narrative, an outline of its key features, and a description of its serious flaws. It then suggests recommendations to address these flaws. Our assessment is that the RTE is a mixed bag, with some good and some really bad ideas. It requires our sustained engagement to improve its design and a proper implementation.

## Historical narrative

Post-independence, Article 45 of the newly framed Constitution stated that the State shall endeavour to provide within a period of 10 years from the commencement of the Constitution, free and compulsory education to all children until they complete the age of 14 years.

As is evident even after 60 years, universal elementary education remains a distant dream. Despite high enrolment rates of approximately 95 per cent, 52.8 per cent of children studying in the fifth grade lack the reading skills expected of children in the second grade (Annual Status of Education Report, ASER 2009). Free and compulsory elementary education was made a fundamental right under Article 21 of the Constitution in December 2002, by the 86th Amendment. To translate this into action, the 'Right of Children to Free and Compulsory Education Bill' was drafted in 2005. The



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Bill was revised and it became an Act in August 2009, but was not notified for roughly seven months.

The reasons for the delay in notification can be mostly attributed to

the unresolved financial negotiations between the National University of Education Planning and Administration, NUEPA, which has been responsible for estimating RTE funds, the Planning Commission, and the Ministry of Human Resources and Development (MHRD). From an estimated additional Rs 3.2 trillion to Rs 4.4 trillion for the implementation of the RTE Draft Bill 2005, over six 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 five years. Most education experts agree that this amount will be insufficient. Since education falls under the concurrent list of the Constitution, financial negotiations were also undertaken between the central and state authorities to agree on sharing of expenses. This ratio has now been agreed at 55:45 between them with the centre bearing the larger share; though states like Uttar Pradesh and Bihar continue to argue that their share should be lower. It is interesting to note that the financial estimates prepared by NUEPA provide four different scenarios of expense sharing between the centre and the states (85:15, 75:25, 65:35, and 50:50), none of which is the 55:45 share estimate which has now been agreed upon.

## Overview of the Act

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

- Every child from 6 to 14 years of age has the right to free and com-

pulsory education in a neighbourhood school, till the completion of elementary education.

- Private schools must take in a quarter of their class strength from 'weaker sections and disadvantaged groups', sponsored by the government.
- All schools except private unaided schools are to be managed by School Management Committees with 75 per cent of parents and guardians as members.
- All schools except government schools are required to be recognised, by meeting specified norms and standards within three years to avoid closure.

On the basis of this Act, the centre has framed a subordinate legislation, the Model Rules, which are guidelines to states for implementing the Act. The states are now required to frame their own rules within three months, for which only a few have started consultations. It is not unrealistic to assume, therefore, that this three-month deadline will either not be met, or, if met, will be at the expense of drafting proper state-specific rules.

## A critique

The RTE Act has been criticised by various experts and institutions, but the MHRD was perhaps keen to achieve this legislation in the first 100 days of the second term of the UPA, and therefore, chose to ignore many important difficulties of the Act. The most important difficulties are:

**Inputs and outcomes:** The Act is deemed to be 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 seem to be overestimated given the existence of inefficient, corrupt, and unaccountable institutions of education provision.

**School recognition:** Section 19 of the Act requires all schools, except government schools, to meet certain norms and standards relating to infrastructure, pupil-teacher ratio, and teacher salaries on the basis of which they are required to get recognised within three years. This clause pe-

## Section 19 of the Act penalises private unrecognised schools for their payment of market wages to teachers, rather than the elevated civil service wages



nalises private unrecognised schools for their payment of market wages to teachers, rather than the elevated civil service wages. It also penalises private schools for lacking the infrastructural facilities defined under a Schedule of the Act. These schools are extremely cost efficient, operate mostly in rural areas or urban slums, and provide essential educational 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, as per the Act the government will shut down many of these schools over the coming three years. A better alternative will have been to find mechanisms through which public resources can be infused into these schools. The exemption from the same recognition requirements for government schools is a case of double standards.

**School Management Committees:** The Act requires every government and aided school to form School Management Committees (SMCs) which are to comprise mostly parents, and be responsible for planning and managing the operations of government and aided schools. The SMCs will help increase the accountability of government schools, but need to be given greater power 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 can help increase efficiency and focus of such committees. Turning to private but 'aided' schools, the new role of SMCs will lead to a breakdown of their existing management structures.

**Teachers:** Teachers are the cornerstone of 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 in comparison with the market wage of a teacher in most schools in the country. A better mechanism will be to allow schools to design their own teacher salaries with autonomy in managing them. A major problem in India is the lack of incentives for 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 a study of 188 government-run primary schools indicate that an average of 25 per cent teachers are absent from schools at any given point and almost half of those who are present are not engaged in teaching activity. The SMCs 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 per cent reservation in private schools:** The Act and the Model Rules require all unaided private schools to reserve at least 25 per cent of their seats for the 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?
- How will the government select these students for the entry-level class?
- Will an admission lottery be conducted by the neighbourhood, or

by the entire village / town / city? How will 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 will be allowed / encouraged in the process?
- What will 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. Private schools will end up charging more to the 75 per cent of students paying tuition fees directly. Reimbursement calculations should include capital as well as recurring costs incurred by the government to reduce this cross-subsidising.

Furthermore, the Act requires aided private schools to provide free education to the proportion of children as the extent of aid received from the government with a minimum of 25 per cent. The Act, however, fails to mention the basis of identification for the children who are to receive free education.

**Financial estimates:** The financial estimates for the RTE for the coming five years are based on certain unjustified assumptions. In the absence of proper mapping, the estimates assume that one-third of all additional classrooms need to be built in new schools and the rest in already existing schools. Moreover, the estimates stipulate a monthly average of Rs 8,400 as teacher salary at the primary level and 80 per cent of the upper primary level teachers as per the revised 6th Central Pay Commission. This figure is an underestimation in view of the additional expenses incurred on teachers over and above the basic salary as well as the long-term costs such as teacher pensions. Furthermore, the estimates ignore important expenses required to improve accountability structures, monitoring processes, awareness building, and 25 per cent reservation implementation.

## Along with ensuring focussed reforms in government schools and regulation for private schools, we need to create an ecosystem conducive to spontaneous private involvement



The RTE Act has been passed; the Model Rules have been released; and financial closure appears at hand. Does this mean the policy process is now impervious to change? The answer is, no. Even today, much can be achieved through a sustained engagement with this problem.

Even though the state rules are likely to be on the same lines as the model rules, they 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 can yield improvements in at least some of them. If even a few states are able to break away from the flaws of the central arrangements, this will yield demonstration effects of the benefits of better policies.

Since unrecognised schools can face closure in view of the prescribed recognition standards within three years, we can find ways to support such schools to improve their facilities. For instance, through 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.

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 the Right to Information (RTI) 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. In fact a group of unaided private schools from Rajasthan has already filed a writ petition. It is, therefore, critically important for us to follow such cases and, where feasible, provide support which addresses their concerns without jeopardising the implementation of the Act.

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

Finally, along with ensuring implementation of the RTE Act which stipulates focussed 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 totalling more than 30 licences. Let the government and the private sector come together to finally give meaning to our fundamental right of good quality elementary education for all. ■

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