

Right to Education

VINOD RAINA



15 December 2008. Seventy one years since Mahatma Gandhi gave the call for universal education in 1937; sixty one years since independence; fifty eight years since the Constitution, instead of making education a fundamental right made it part of the Directive Principles; fifteen years since the Supreme Court in 1993 ruled on the right to education; six years after the 86th constitutional amendment was passed by the Parliament in 2002 by inserting Article 21A making education a fundamental right for children in the restricted age group of 6 to 14 years; and four years after the draft bill was prepared by the CAFE committee, the Right to Free and Compulsory Education Bill was introduced in the Rajya Sabha on 15 December 2008. Though the delay on part of the state is deplorable, the introduction is undeniably momentous.

Even though nearly all educationally developed countries attained their current educational status by legislating free and compulsory education – Britain did so in 1870 – India has dithered and lagged behind in introducing such legislation, with grave consequences. Of the nearly 200 million children in the 6 to 14 age group, more than half do not complete eight years of elementary education, as never enrolled or dropouts. Of those who do complete eight years of schooling, the achievement levels of a large percentage, in language and mathematics, is unacceptably low. It is no wonder that a majority of the excluded and non-achievers come from the most deprived sections of society – dalits, OBCs, adivasis, girls, Muslims and poor – precisely the people who are supposed to be empowered through education.

With heightened political consciousness amongst the deprived and marginalized, never in the history of India has the demand for inclusive education been as fervent as today. Yet even a cursory examination of the proposed bill shows some glaring shortcomings. Like the age of the child. As a signatory to the UN Child Rights Convention, India has accepted the international definition of a child, which is up to age 18. The bill proposes to cover only children from age 6 to 14, clearly excluding and violating the rights of the 0-6 and 14 to 18 year olds. This problem can be traced to the 86th amendment and its article 21A, which defines the age from 6 to 14. As a bill flowing out of the amendment, it is clear that the bill cannot go beyond Article 21A, which makes it imperative that the 86th amendment must be re-amended to correct this anomaly, and once that happens, the change needs to be reflected in the corresponding act at that point of time.

Many argue that the bill should be put on hold till such a re-amendment is passed, but that would be playing into hands of elements who neither want the amendment nor the bill. Such elements do not want the state to invest in education and instead prefer to leave it to the markets, and persuading the Parliament to re-amend at this stage with the kind of majority required seems remote, given the fractured polity post the nuclear deal and the Mumbai terrorism episodes.

Having made education a fundamental right, the question that needs serious debate is whether the bill introduced in Parliament will help improve the situation in a substantial manner or not. To address that question, it needs to be recognized that the challenge of elementary education is to somehow find a way to deal with the elusive triangle of access, equity and quality. The bill needs to be critically evaluated from the viewpoint of this triangular challenge.

The basic aspect of access is the provision of a school in the proximity of a child, since there are still areas in the country where such access is lacking. The bill envisages that each child must have access to a neighbourhood school within three years from the time the bill is notified as an act. The presence of a nearby school is, however, no guarantee that a child can indeed access it. One of the key barriers, particularly for the poor and the deprived, is the issue of cost.

That is where one of the critical aspects of Article 21A comes into play, namely, the state shall provide 'free' education. Normally, 'free' is interpreted as non-payment of fees by the parents of the child. But numerous studies have concluded that the fee constitutes only one of the components of educational expenditure. And since the landless, poor and socially deprived cannot meet the other expenses, this results in the non-participation of their children in education.

These other expenses differ from place to place, though uniforms, copies and books and so on are perhaps common. The bill defines free education to mean any fee, expense or expenditure that keeps a child from participating in education, and obliges the state to provide all these. This broader definition, with implications for higher expenditure by the state, appears to be a better way to meet the challenge of access in terms of costs, rather than providing a list of items that will be covered, which are difficult to anticipate in different locations and in the future and hence cannot be exhaustive.

Sustained participation in schooling is, however, equally influenced by the quality of access. The high non-retention rates in spite of higher enrolments in recent years are a clear indication that concerns of quality cannot be postponed till access is guaranteed, as also by the increasing tendency to seek out questionable private schools perceiving their quality to be 'better'. The approach of providing schooling through education guarantee centres and untrained para teachers has also greatly exacerbated the problem of quality of government schools ever since the District Primary Education Programme pioneered this cost-cutting strategy, further expanded through the Sarva Shiksha Abhiyan in many states of the country. This approach has resulted in making education more iniquitous, since the government system itself now has a variety of streams – the EGS centre, the rundown rural or *basti* school, the alternative school, the Kendriya, Sarvodaya, Navodaya and other kinds of schools and so on.

Clearly, access to each is determined according to the social and class background of children, thus segregating them further. Consequently, the social integration that education was expected

to assist, by bringing children from diverse backgrounds together in the same classrooms, has been allowed instead, one may say deliberately, to experience higher degrees of fragmentation. No wonder then that an increasing number of parents, both urban and rural, despite great financial difficulties, are attracted to the option of purchasing education from private profit-making schools that seem to have external frills of quality and regular presence of teachers.

The bill tries to address the problem by invoking a minimum infrastructural quality in schools through a mandatory schedule which lays down minimum norms for availability of classrooms, libraries, teaching-learning materials, separate toilets for boys and girls, drinking water, and playgrounds. The schedule also mandates a minimum pupil-teacher ratio, number of hours of teaching per week and for the year. The bill explicitly requires the pupil-teacher ratio to be maintained in each school, rather than as an average over a block or a district, which allows for a great deal of skewness in the placement of teachers between towns and remote areas.

The most difficult part of the bill to implement will be the provision for appointing teachers on the basis of national norms to be determined by a national agency within five years of its notification. Given the extraordinary number of untrained teachers appointed in the last fifteen years, state governments will have to completely overhaul teacher training mechanisms to put this provision in place, both in order to bring existing teachers under these norms, and ensure that fresh teachers are appointed only after they have been pre-trained to these norms. This could be a major factor in determining the future quality of government schools.

Having provided for the salary and emoluments of teachers to be commensurate with these qualifications, the bill lays down duties and responsibilities of teachers in specific terms to ensure their regular presence and engagement with the school. Consequently, the bill prohibits all non-academic tasks that the teacher may be asked to do, except for duties related to elections and decennial census, which are mandated for all government employees by another article of the Constitution, and which no act can override. It is hoped that the infrastructural and teacher quality provisions will reverse the trend of further dilution of the already impoverished government school system.

The management of the school system has been a matter of constant debate, ever since it became apparent that the present highly bureaucratized system could not deliver at the local levels. The panchayati raj system has, therefore, been evoked in many states, with differing results, depending on the strength of the PRIs from state to state. However, there is a self-suggesting principle regarding management that has been incorporated in the bill, i.e., explicitly bringing in the parents. But even Parent Teacher Associations in good schools normally have no say in the management aspects of the schools; that is the prerogative of a separate management committee.

While recognizing the overall role of the local authorities in the management of the schools (local authorities could be PRIs or any other such authority designated by the state governments), the bill mandates that each government school will be managed by a School Management Committee (SMC) that will draw three-fourth of its members from amongst the parents of children in the school, with special emphasis on those belonging to weaker and deprived sections. The SMC shall monitor, plan and manage the school, in collaboration with the local authority. Though an earlier draft suggested that the SMC would also be in charge of disbursing salaries to the teachers, this provision was dropped in face of total opposition by teacher unions who feared that teachers could be vilified in the process because of local politics.

Though infrastructural and teacher quality improvements is where most of the costs are involved, but perhaps even more important for overall quality improvement are aspects of curriculum design and its transaction in the classroom. This is also closely related to the very purpose of education – the values education should promote, the way children should be treated in the classroom, the medium of instruction and so on. Though in countries marked by high social and cultural diversity, educationists increasingly favour the notion of education of equitable quality as against a hegemonizing education drawing on universal qualities, this remains a matter of serious contestation.

Adherents of market economy and neo-liberal ideologies are impatient with the notion of equitable quality and would instead prefer to see a quick shift over to skills and attitudes that make for a good consumer or a ‘global citizen’, which would require learning English, computer skills and so on as early as possible. Then there is the question of values. If one follows the Constitution, the values to be promoted should be those of democracy, equality, debate and free speech, scientific temper, secularism, human rights and so on. The ‘saffronization’ debate, however, makes it clear that not everyone is in agreement.

As for pedagogy, the National Curricular Framework 2005 has sharply brought out the divisions between those who still promote the behaviourist approach, accompanied by rote learning, annual examinations, detention and failure as conducive to quality improvement versus the NCF formulations located in the constructivist approach that supports a child-centred strategy promoting understanding through a critical pedagogy.

In the drafting process one view was that the bill should confine itself to infrastructural and management aspects and steer clear of transactional concerns. That was contested by another view, one that I supported, that the bill must minimally lay down principles to be followed for content and process of education. The law ministry too also was of the view that transactional aspects should be removed since there might be problems of justiciability, a view that too was contested. Finally, the chapter on content and process that remains in the bill requires curriculum design institutions to adhere to principles that promote constitutional values, use pedagogic approaches based on discovery, exploration and activities, free the child from fear and trauma and promote the use of mother tongue. Mental harassment and physical punishments of the child are explicitly prohibited.

The outlining of responsibilities of private unaided schools have obviously been at the forefront of the deep schisms that surfaced in formulating the bill. A powerful view was that Article 21A, which states that ‘the state shall provide free and compulsory education’, can be read to mean that there are no obligations on schools that receive no aid from the government and thus they should be kept out of the purview of the bill. Others argued that the fee-charging private schools are an impediment to the concept of a free common school that alone can be the basis of national development, as outlined by the Kothari Commission Report of 1966, and thus they too must be brought into the ambit of legislation to become a part of the neighbourhood common schools. This view contests the narrow definition of state to mean just the governmental system, arguing instead that the state includes both the governmental and the private systems.

An additional demand was to evolve a legal mechanism to regulate the mushrooming commercial school sector that many believe is fleecing the public in the name of questionable quality education.

In eschewing both these extreme positions, the final version of the bill calls on all unaided and special schools like the Kendriya and the Navodaya Vidyalayas to admit 25% children at class 1 level from amongst the deprived sections of society from their neighbourhoods for free education till class eight. Their expense would be remitted to the school by the concerned government at its per learner cost or the cost the school charges, whichever is less. In addition, no school can charge capitation fees and will be punished if it does so, nor can it use any admission procedure like interviewing children or parents except using a random method.

An earlier suggestion to have a regulatory mechanism for all schools, governmental and private, had to be dropped in the absence of consensus. There is evidently a great deal of unease about this provision in both camps. The private school lobbies and their advocates feel that even these limited provisions are an encroachment on their rights. And the strong proponents of the common school system think that the bill represents a betrayal and have even attempted to stall its introduction. Whereas the demand for a common schooling system may be justified to bring to an end the streaming of education on the basis of social diversity and economic class, it is incorrect to locate it within the Kothari Commission formulations. It is worth remembering that the Kothari Commission itself provided for private schools to be kept out of the common school system, and instead recommended setting up three different types of schools in terms of quality of education they would provide. For instance, it asked the government to provide a quality school in each block of the country, which is what the present government is now attempting through a separate private-public partnership scheme by involving industrial houses.

The bill makes an important departure in the definition of the term ‘compulsory’, as provided in article 21A governing fundamental rights. The customary definition, also supported by Myron

Weiner in his much quoted book, *The Child and the State in India*, is to place the onus on parents to ensure that they admit their children in schools, and to provide for punishment of parents in case they fail to do so. The draft bill prepared by the NDA before it lost power in 2004 carried a similar provision. One argument in favour of this provision is that this should prevent parents from engaging their children in child labour.

The present bill, however, takes a completely different view and squarely puts the compulsion on the governments to provide for every child to complete eight years of compulsory schooling. This implies that if a child is on the streets, working in a shop, or is simply at home at a time when he/she ought to be in school, the responsibility is of the government and it is the government that ought to be punished. This has major implications regarding child labour. Once this bill becomes law, it will be illegal for a child to not be in school during school hours, which curbs all forms of child labour during those hours, not just hazardous. However, this bill is silent on what the child should do after and before school hours. Consequently, if the child is engaged in labour before and after school hours, it is necessary that the Child Labour Act of 1986 be amended to ensure that all forms of child labour are banned and children freed to enjoy their fundamental right to education. Equally, the bill does not specify which person/agency will be legally culpable if a child is working and not in school.

This is where the bill is at its weakest; in the matter of enforcement. It provides that in case of a complaint regarding the violation of any of its provisions, it would first go to the local authority. The problem is that the complaint will be decided upon by the very agency that is responsible for the purported violation. Though the bill does invoke the National Commission for the Protection of Child Rights and the state commissions as authorities to look into complaints, they are all distant from the sites of the complaint, normally a village. And the PRI, which would normally also be the local authority for implementing the act, can hardly be seen as an appropriate independent monitoring agency.

The bill does not explicitly spell out the quantum of punishment for violations – be it for denying admissions or violating the provisions regarding quality of access, teacher attendance and so on. For example, the bill explicitly says that admission cannot be denied for the lack of a birth certificate, transfer certificate or for seeking admission after the session has started. But who will monitor that? Will the local authorities hear the parents? This situation is not very different from the implementation of, for example, the NREGA at the ground level where civil society monitoring and social audits have been crucial; likewise, civil society groups like the Social Jurist in Delhi that bring violations to the court on a regular basis, will have to gear up to monitor the implementation and work closely with the school management committees.

Finally, costs. The usual argument, ever since Gandhiji's call in 1937, is that legally ensuring universal compulsory education is beyond the economic capacity of the state. Gandhiji was horrified when he was told that if he insisted, the only source of funds would perhaps be revenue from liquor sales! Though the Supreme Court, in 1993 in the Unnikrishnan case, ruled that the right to education would be restricted by the economic capacity of the state *only* beyond age 14, the government ignored it. When the current draft was being prepared by the CAFE in 2005,

NUEPA made cost calculations in different scenarios, using the Kendriya Vidyalaya salary scales and state government scales for teachers and all the provisions of the mandatory schedule. The amounts in each case fell well within the six per cent of the GDP norm promised by the Common Minimum Programme of the present UPA government.

Yet, despite a much better economic situation than during Gandhiji's time in 1937, the response of the government was no different! The high level group set up by the prime minister to examine the economic and legal implications of the bill recommended that the states bring in their respective legislations for reasons not disclosed. Essentially it was felt that it was much too expensive for the Centre to fund the scheme as per the NUEPA calculations, and further that the Centre could be burdened with a plethora of court cases; so let the states with financial assistance from the centre assume both these responsibilities. The phrase used was that 'states were flush with funds', and in any case they are prone to misuse central funding for freebies like cheap rice and colour TVs for buying votes.

Once the states rejected the recommendations and some of us, in August 2007, questioned the prime minister on the quantum of funds required (on the basis of reduced projections of child population figures by the Registrar of Census in its 2006 corrections to the Census 2001 figures), and perhaps because of the 'political' value of such a legislation on the threshold of parliamentary elections, the central legislation was resurrected.

But it could not be introduced in the budget session in March 2008. This time the question revolved around central and state sharing of funds, and so once again was referred to a group of ministers. Ultimately a change was made in the bill that seems to have satisfied the otherwise reluctant Planning Commission and finance ministry. The bill enables the central government to make a request to the president, under Article 280 of the Constitution, to direct the Finance Commission to make allocations directly to a state for funds required for the implementation of the provisions of the act. Hopefully this should be favoured by the state governments since it opens an avenue for direct central funding to the states on the basis of their requirements under the bill and reduces their crippling dependence on the vagaries of a central scheme.

A calculation done last year revealed that the extra expenditure, over and above the combined expenditure of the states and the Centre, would be around Rs 48,000 crore for the remaining four years of the 11th plan period. If and when the bill is passed with all its current provisions, this estimate would have to be reworked once all the state governments make their calculations in a cascade form. The states have a three-year window to ensure that appropriate schools in the vicinity of the child come up. They also have a five-year lead-time for hiring teachers as per new norms.

Since the states are at different levels of development in their educational attainments – the contrast between Kerala and say Bihar comes easily to mind – their needs would also be

different. The challenge would be to craft flexible and decentralized norms that suit the needs of each state, in contrast to the way the SSA is being currently implemented with rigid norms. There would be other considerations too. For example, the current SSA is incompatible with the fundamental rights based requirements of the bill; the central government would have to decide whether to reformulate the SSA appropriately or to bring in a completely different funding mechanism to implement the fundamental right.

One implication of the bill becoming an act is that it would override all the existing state legislations dealing with elementary education. But each state would also be required to prescribe rules for the act for implementation. The preparation of these rules would be critical in preserving the fundamental right nature of the act. It would perhaps be useful for the ministry of human resource development to circulate model rules that the states could then adapt to their specific needs. This should ensure that the central concerns regarding quality and access do not differ from state to state, while giving freedom to states to incorporate their own needs.

But all that is in the future; the present concern is that if the bill is not passed before the elections, though it would not lapse since it has been introduced in the Rajya Sabha, it could fall into deep slumber depending on the priorities of the next government. History has shown that successive governments, in spite of their constitutional obligations, do not find spending money for universalizing quality education politically compelling. Could that change now?