

# Right to Education Act 2009: Critical Gaps and Challenges

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After the many rounds of drafting and redrafting that went into the Right of Children to Free and Compulsory Education Act of 2009, it was hoped that the Act would be an effective instrument for any child to demand her basic entitlement. Yet, a close look at the provisions reveals disconcerting features.

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Knowing how to read is knowing how to walk.  
Knowing how to write is knowing how to ascend.  
Feet, arms, wings, all these are given to man  
By his first and most humble schoolbooks.<sup>1</sup>

It is generally acknowledged in contemporary discourse that access to good quality elementary education, at the minimum, must be treated as a fundamental right. Custodians of public policy in India, after doing precious little on a matter so critical to the country's well-being for over half a century, seem to have displayed a degree of urgency and seriousness in the recent years. The enactment of the Right of Children to Free and Compulsory Education (henceforth RTE) Act 2009

is a step in the right direction. The road ahead, however, seems to be rough, given that the "how" and the "where to" remain ambiguous in several important respects in this otherwise significant enactment.

## Historical Context

To quickly recap the recent steps in the journey of the RTE Act 2009: the 86th Amendment Act, 2002, made three specific provisions in the Constitution to facilitate the realisation of free and compulsory education to children between the age of six and 14 years as a fundamental right. These were (i) adding Article 21A in Part III (fundamental rights), (ii) modifying Article 45, and (iii) adding a new clause (k) under Article 51A (fundamental duties), making the parent or guardian responsible for providing opportunities for education to their children between six and 14 years. After much dithering for almost seven years subsequent to the 86th Amendment to the Constitution, the RTE Act 2009 received presidential assent on 26 August 2009, taking forward the

agenda of free and universal elementary education, although the central government is yet to notify it.<sup>2</sup>

Ostensibly, the delay in notification is on account of the fact that the “model rules” required to operationalise the act are yet to be formulated and a committee has been constituted by the Ministry of Human Resource Development (MHRD), government of India, to draft the appropriate rules. While this task is quite sticky and slippery in many ways, and we empathise with the members of the committee on this count, our fear is that the centre may continue to drag its feet or dilute the relevant provisions, largely on account of the financial implications. It may be recalled here that the RTE Bill was passed by Parliament without an accompanying financial memorandum and the issue of sharing the requisite costs between the centre and the states has been an extremely contentious one.

### One Step Forward

In September 2004, the Central Advisory Board of Education (CABE) Committee was constituted as a first step to drafting the RTE Bill. The bill was submitted to the government in June 2005, although without any consultations being held with the public. It was found wanting on several fronts, beginning with its definition of a “child” (not less than six years and not more than 14 years), to not owning up to the economic responsibility of the union government while fleshing out the provisions. Further, not only did the bill have none of the tenets of the Common School System (CSS) that would have allowed for compulsory and uniform quality education to all, but it was also unable to suggest specific amendments necessary in the Child Labour (Prohibition and Regulation) Act, 1986.

### Two Steps Backward

The government, however, dithered on moving ahead with the recommendations made in the draft RTE Bill, 2005, citing lack of funds, and drafted a Model Right to Education Bill, 2006, and proposed providing incentives to states for adopting the Model Bill. The draft Model Bill’s implementation was linked to the centre funding states’ Sarva Shiksha Abhiyan (SSA) costs to the tune of 75%. If this

arm-twisting was not enough, the financial responsibility of providing free and compulsory education was primarily on the states and Union Territories (UTs), making elementary education the first charge on the revenue of the state/UT governments. This was, clearly, a move to weaken whatever had been attained through enacting the 86th Amendment in 2002. It made a mockery of Article 21A of the Constitution by misinterpreting free, universal and compulsory education.

Due to a combination of factors, including public pressure, a decision was finally taken to introduce a central legislation in the budget session of Parliament in 2008. The CABE draft of August 2005 was resurrected. Since it had already received substantial response from state governments and the public, these were incorporated into a new draft bill by a working group constituted by the MHRD. Although the redrafted RTE Bill 2008 was not made public or opened to consultations, the union cabinet went ahead and cleared the draft bill on 31 October 2008; with some changes, this got enacted as the RTE Act 2009.

### RTE Act 2009

Every child of the age of six to 14 years shall have a right to free and compulsory education in a neighbourhood school till completion of elementary education.<sup>3</sup>

One would have expected that after so many rounds of drafting and redrafting the enactment, the final outcome would be an effective instrument for any child in this country to demand her basic entitlement. Yet, a closer look at the provisions of the act continues to reveal disconcerting features, as the following pointers make evident.

To begin with, the act further fortifies the multitiered and unequal education structure as opposed to a CSS. Of the various categories of schools, a clear distinction is made in how much of the burden of providing free and compulsory education would fall on each kind.<sup>4</sup> While the government-run schools would cover costs associated with all its wards, the government-aided schools would be accountable to admitting students proportionate to 25% of their annual grants. Although the act requires that special category schools (i.e., Kendriya Vidyalayas, Navodaya Vidyalayas and Sainik Schools) and unaided schools

admit 25% children from the weaker sections and disadvantaged groups of the population, it ensures reimbursement by the government to these unaided schools, based on per child expenditure incurred towards admitting these students.<sup>5</sup>

One can understand if the government was keen to get the act operational at the earliest and was temporarily subsidising the costs of private schools for providing education. However, this is certainly not the case, as the government does not specify any time frame up to when it would continue to reimburse the costs of education for private schools.

### Who Is a Child?

Clarity is missing even on the basic understanding of who is a child. The United Nations Convention on Rights of the Child (UNCRC) defines any individual below 18 years of age as a child. While the Juvenile Justice Act in our country considers persons below 14 years of age to be children, the RTE Act 2009 narrows the definition down to persons between six to 14 years.<sup>6</sup> Though the act expresses interest in taking necessary steps in providing free pre-school education for children above three years of age,<sup>7</sup> leaving out this critical segment of the child population from the definition is worrisome. Not only does the act fail to cover all children, it does not provide definite timelines for many provisions.

### Flexible or Ambiguous?

As already noted, the five-month old enactment continues to be in a state of suspended animation with the government yet to set a date for the act to come into force as a legally binding obligation.<sup>8</sup> This is not the only worrisome aspect about timelines with regard to the act. Several provisions leave scope for the government to delay effective implementation. For instance, the question of establishing a neighbourhood school where there is none within three years of commencement of the Act is a case in point.<sup>9</sup> The extent of ambiguity becomes obvious as the act does not clarify the area or limits for establishment of a neighbourhood school, leaving this to be decided by the government at a later date through rules that it may deem fit to alter.<sup>10</sup>

This uncertainty is also evident in determining the eligibility of a teacher. As a critical component affecting outcomes, eligibility of teachers would be based on minimum qualifications as laid down by an academic authority.<sup>11</sup> However, the Act also allows for unqualified teachers to continue for five years after the Act comes into effect, on grounds of lack of availability of trained teachers.<sup>12</sup> It also provides for relaxation of rules and appointment of unqualified teachers for five years till the Act is notified. This only reflects the government's non-serious approach to implementing the Act and its disregard of quality of outcomes.

**Quality: Real or Rhetorical?**

The Act lists key norms and standards that would need to be adhered to by all schools, failing which no school may be established.<sup>13</sup> This provision is contradicted when the government gives three more years after the Act takes effect to schools that do not comply with the norms as specified in the schedule (see Table 1).<sup>14</sup> To add to this, the central government may rule to change the schedule by adding or even omitting norms and standards.<sup>15</sup> It is acceptable if items or qualifications are added to the existing parameters; it is another matter that even now the government is unable to set the basic minimum requirements for a school.

**Table 1: Schedule Outlining Norms and Standards for a School**

Item	Norms and Standards
1 Number of teachers	30:1 (for class I-V) 35:1 (for class VI-VIII) At least three subject teachers (for class VI-VIII)
2 Building	1 classroom per teacher 1 office-cum-store for headmaster Separate toilets Drinking water Kitchen for mid-day meal preparation Playground Boundary wall
3 Minimum number of working days in an academic year	200 working days (for class I-V) 220 working days (for class VI-VIII)
4 Minimum number of working hours per week for a teacher	45 teaching including preparation hours
5 Teaching/learning equipment	Provided to each class
6 Library	Provided to each school
7 Play material, games, sports equipment	Provided to each class

Source: RTE Act 2009, pp 12-13.

Another aspect relating to quality is the nature of job conditions for teachers. With a plethora of evidence pointing to the fact that differential remuneration to teachers affects their motivation, the absence of

any indicative benchmarks for teachers' salary is a significant oversight in the Act. Further, while the Act suggests that no teacher should be engaged in any non-educational tasks, it excludes their engagement in the population census, duties pertaining to disaster relief and elections at various levels.<sup>16</sup> Not only does the act turn a blind eye to the workload and the absence of motivation among teachers, it forbids them from taking private tuitions.<sup>17</sup> With more than 26% of children in classes IV to VIII attending private tuitions classes,<sup>18</sup> this may be a case of misplaced activism. Setting uniform salary norms for teachers and withdrawing them from all non-educational purposes might have served the cause more effectively.

**Who Is Accountable?**

Quality monitoring is attainable only in a culture of accountability. To ensure this, the Act requires that all schools, except those that are unaided, constitute school management committees.<sup>19</sup> Apart from complex questions relating to fixing of accountability at different levels, which remain unaddressed (maybe for good reason, as the Act could not have spelt out all the relevant details), it is not clear why unaided schools are left out of the purview of accountability with regard to the provisions contained in Section 21.1,

when they admit 25% of the underprivileged students. Further, the government seems to be in no hurry to adhere to the spirit of the right to education, going by the number of

disclaimers that are provided.<sup>20</sup> These allow for prosecution to be instituted only with the previous sanction of an authorised government personnel in the event of a school charging any kind of fees. These also relate to the decision to scrap the recognition of any school, and prosecution for running a school without any recognition. An intelligent guess is sufficient to peg the occurrence of such prosecution as unlikely.

The Act also maintains that legal proceedings against such actions of the government cannot be initiated in the event that these have been undertaken in good faith and best interests of the children.<sup>21</sup> Rather than pursuing an objective vision, the Act is ridden with loopholes. There are many other issues that need to be examined closely (such as harmonisation of rules and provisions in place in different states with the RTE Act 2009, among others); however, we now shift our focus to the question of finances.

**Financial Responsibility**

There is no clarity on who will take the lead in financing the Act. Ideally, the central government ought to be shouldering this duty in the light of the poor fiscal situation in most states. Acknowledging this reality, the Act notes that the states may seek a predetermined percentage of expenditure as grants-in-aid from the central government, based on the recommendations of the finance commission on assessment of additional resource requirements for any state. Be that as it may, the Act reveals an obvious contradiction when, on the one hand, it suggests that both the union and state governments have concurrent responsibility to finance the Act,<sup>22</sup> with the centre preparing estimates of capital and recurring expenditure under the Act, while on the other, it

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unequivocally holds the state governments responsible for providing the funds for implementation of the Act.<sup>23</sup>

The union government's attempt to shy away from taking primary financial responsibility of implementing the act is in keeping with its reluctance to allocate adequately for the social sector. The Eleventh Plan outlay for education was promised to be approximately 20% of the total. A rudimentary analysis of the budgetary outlays by the union government in the three years from 2007-08 to 2009-10 on key plan programmes in the elementary education sector, i.e., on SSA and the Mid-day Meal Scheme, reveals that when seen as a proportion to the total outlay in the Eleventh Plan, the trajectory of spending in the first three years of the Eleventh Plan period in this sector does not conform to the promises.

We may also note here that spending on education by the union government in the 2009-10 budget estimate (BE) stood at Rs 44,528 crore (around 0.76% of GDP) while the state governments in 2008-09 (BE) were provisioning Rs 1.3 lakh crore (around 2.3% of GDP). Despite reiterating the same commitment over the past 40 years, i.e., to take government spending on education to 6% of GDP, spending by the union and state governments remains at 3.7% of GDP (2007-08).

The Central Advisory Board of Education (CABE) Committee had estimated that in the six-year period from 2006-07 to 2011-12,<sup>24</sup> additional outlays of Rs 4.36 lakh crore (with teachers' salaries at Kendriya Vidyalaya norms) and Rs 3.93 lakh crore (with teachers' salaries at the prevalent scales) would have to be allocated to universalise elementary education. Sticking to the lower level of CABE projections, the additional required outlays are Rs 3.93 lakh crore for a five-year period. Reports in the media that the required additional outlays amount to Rs 1.78 lakh crore, spread over a period of five years, as estimated by the MHRD, for implementing the RTE Act 2009 seem extremely disturbing, if not mysterious.<sup>25</sup>

In principle, the RTE Act 2009, with appropriate modifications and financial provisioning, offers a great opportunity to correct the anomaly of poor education outcomes, and can deliver on the

long-standing commitment of providing basic and quality education to the so-called "demographic dividend" of the country. Unfortunately, short-term political gains and poor judgment on the part of politicians and policymakers may continue to be major roadblocks in accomplishing this critical goal.

#### NOTES

- 1 These lines are by Jose "Marti", a 19th century Latin American thinker, poet and revolutionary.
- 2 If media reports of 12 February 2010 in national dailies are to be believed, it would be notified in 1 April 2010.
- 3 Section 3 (i), Chapter 2, RTE Act, 2009.
- 4 Section 12.1, RTE Act 2009.
- 5 Section 12.2, RTE Act 2009 states that: "The school specified in sub-clause (iv) of clause (n) of section 2 providing free and compulsory elementary education as specified in clause (c) of sub-section (1) shall be reimbursed expenditure so incurred by it to the extent of per-child-expenditure incurred by the state, or the actual amount charged from the child, whichever is less, in such manner as may be prescribed."
- 6 Section 2 c, RTE Act 2009: "Child means a male or female child of the age of six to fourteen years."
- 7 Section 11, RTE Act 2009 states that: "With a view to prepare children above the age of three years for elementary education and to provide early childhood care and education for all children until they complete the age of six years, the appropriate government may make necessary arrangement for providing free pre-school education for such children."
- 8 Section 1.3, RTE Act 2009: "It shall come into force on such date as the central government may, by notification in the Official Gazette, appoint."
- 9 Section 6, RTE Act 2009: "For carrying out the provisions of this Act, the appropriate government and the local authority shall establish, within such area or limits of neighbourhood, as may be prescribed, a school, where it is not so established, within a period of three years from the commencement of this Act."
- 10 Section 38.2b, RTE Act 2009: "The appropriate government may, by notification, make rules. In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely: the area or limits for establishment of a neighbourhood school, under Section 6."
- 11 Section 23.1, RTE Act 2009: "Any person possessing such minimum qualifications, as laid down by an academic authority, authorised by the central government, by notification, shall be eligible for appointment as a teacher."
- 12 Section 23.2, RTE Act 2009: "Where a state does not have adequate institutions offering courses or training in teacher education, or teachers possessing minimum qualifications as laid down under sub-section (1) are not available in sufficient numbers, the central government may, if it deems necessary, by notification, relax the minimum qualifications required for appointment as a teacher, for such period, not exceeding five years, as may be specified in that notification: Provided that a teacher who, at the commencement of this Act, does not possess minimum qualifications as laid down under sub-section (1), shall acquire such minimum qualifications within a period of five years."
- 13 Section 19.1, RTE Act 2009: "No school shall be established, or recognised, under section 18, unless it fulfils the norms and standards specified in the schedule."
- 14 Section 19.2, RTE Act 2009: "Where a school established before the commencement of this Act

does not fulfil the norms and standards specified in the schedule, it shall take steps to fulfil such norms and standards at its own expenses, within a period of three years from the date of such commencement."

- 15 Section 20, RTE Act 2009: "The central government may, by notification, amend the schedule by adding to, or omitting therefrom, any norms and standards."
- 16 Section 27, RTE Act 2009: "No teacher shall be deployed for any non-educational purposes other than the decennial population census, disaster relief duties or duties relating to elections to the local authority or the state legislatures or Parliament, as the case may be."
- 17 Section 28, RTE Act 2009: "No teacher shall engage himself or herself in private tuition or private teaching activity".
- 18 Pratham (2010), *ibid*.
- 19 Section 21.1, RTE Act 2009: "A school, other than a school specified in sub-clause (iv) of clause (n) of Section 2, shall constitute a School Management Committee consisting of the elected representatives of the local authority, parents or guardians of children admitted in such schools and teachers."
- 20 Section 35, RTE Act, 2009: "The central government may issue such guidelines to the appropriate government or, as the case may be, the local authority, as it deems fit for the purposes of implementation of the provisions of this Act." Section 36, RTE Act, 2009 "No prosecution for offences punishable under sub-section (2) of section 13, sub-section (5) of section 18, and sub-section (5) of section 19 shall be instituted except with the previous sanction of an officer authorised in this behalf, by the appropriate government, by notification."
- 21 Section 37, RTE Act 2009: "No suit or other legal proceeding shall lie against the central government, the state government, the National Commission for Protection of Child Rights, the State Commission for Protection of Child Rights, the local authority, the School Management Committee or any person, in respect of anything which is in good faith done or intended to be done, in pursuance of this Act, or any rules or order made thereunder."
- 22 Section 7.1, RTE Act 2009: "The central government and the state government shall have concurrent responsibility for providing funds for carrying out the provisions of this Act." Section 7.2, RTE Act 2009: "The central government shall prepare the estimates of capital and recurring expenditure for the implementation of the provisions of the Act." Section 7.3, RTE Act 2009: "The central government shall provide to the state governments, as grants-in-aid of revenues, such percentage of expenditure referred to in sub-section (2) as it may determine, from time to time, in consultation with the state governments." Section 7.4, RTE Act 2009: "The central government may make a request to the President to make a reference to the finance commission under sub-clause (d) of clause (3) of article 280 to examine the need for additional resources to be provided to any state government so that the said state government may provide its share of funds for carrying out the provisions of the Act."
- 23 Section 7.5, RTE Act 2009: "Notwithstanding anything contained in sub-section (4), the state government shall, taking into consideration the sums provided by the central government to a state government under sub-section (3), and its other resources, be responsible to provide funds for implementation of the provisions of the Act."
- 24 From the 2005 report of the CABE Committee on Free and Compulsory Education Bill and Other Issues related to Elementary Education Spending, Ministry of Human Resource Development.
- 25 Mukul, Akshaya (2009) "Cost of Right to Education: Rs 1.78 lakh crore", *Times of India*, 29 September.