

Institutional Framing of the Right to Education Act Contestation, Controversy and Concessions

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This paper presents results from a larger household-, school-, and institutional-level study on the role of the private sector and the early phase of implementation of the Right of Children to Free and Compulsory Education Act, 2009. While some of the controversies about the RTE Act were reported in the media and publicly discussed, this paper reports data from semi-structured interviews with key education officials and implementers, some of whom were responsible for drafting the Act, and traces successive iterations of draft bills. The paper exposes contestation, controversy and concessions that were made in policy backrooms throughout the processes framing the Act.

While provisions in India acknowledging the right to education existed in principle long before it, the Right of Children to Free and Compulsory Education Act, 2009 (RTE Act) is the first official central government legislation to fully confer this right by law and to extend it across the country. This marks a significant shift, not only in the formal policy and legal frameworks governing education, but also in the way that education should be conceptualised. However, despite its laudable aims, the Act is the result of a protracted process of deliberation and public debate, causing much controversy, which continues.

Upon its enactment, much public attention has been focused on Section 12(1)(c) compelling all private schools to allocate 25% of their places in Class 1 (or pre-primary, as applicable) for free to “children belonging to weaker section and disadvantaged group” (Government of India 2009) to be retained until they complete elementary education. Private schools are to be reimbursed for each child enrolled under the provision at the level of state expenditure per child or tuition fee charged at the school, whichever is less (ibid: Section 12(2)). In Delhi, this amounted to a maximum of Rs 1,190 per child per month for the 2011-12 school year (Government of NCT of Delhi 2012), covering the time span and site for this study.

Part of a larger study, this paper reports data and analysis on the processes framing the RTE Act in policy backrooms, traces successive iterations of draft bills, and analyses perceptions and experiences of key officials and implementers in the early phase of implementation. The analysis revealed that some of the legislative terms and rules were framed through discursive practices ensconced in contestation and controversy, and concessions were made to the final articulation of the Act. The aim is to draw attention to the contestation, controversy, and concessions in policy backrooms which may otherwise have been muted in public exchange, and to set them alongside better-known public debates. The hope is that in so doing, we view the RTE Act not as encompassing a singular set of views, but as the result of a negotiated process marking the beginning of a new phase of institutional evolution in education in India.

1 The Right to Education: History and Public Controversies

Contestation, controversy and concessions are not new to attempts of introducing free and compulsory education in India. Gopal Krishna Gokhale’s 1911 Bill was an attempt to introduce free and compulsory education in a phased manner, a

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concession from the previously rejected 1910 resolution. The bill included other concessions such as leaving its application to the discretion of local bodies, and exempting only those households whose monthly income was less than Rs 10 from any fee payment (Balagopalan 2004; Little 2010), but it was also rejected. Post-Independence, the first target date to meet the goal of free and compulsory education for all was 1960. While adopting the Indian Constitution in 1950, Article 45 of the Directive Principles of State Policy, Part IV, gave a policy directive to all states to provide free and compulsory education to all children until the age of 14 within 10 years. But, this was not met.

Though the Kothari Commission (1964-66) proposed a common school system along with a phased increase in public spending for education to 6% of gross domestic product (GDP) by 1985, this also did not materialise. There remains wide discontent on public expenditure on education and on the erosion of the common school system. Scholars have argued that the rejection of many of the later Ramamurti Committee (1990) report's major recommendations regarding the invigoration of the common school system, considerations about quality development, and measures to address equity in schooling when announcing the last National Policy of Education (1992) pointed to a serious lack of political will and commitment at the highest levels (Kumar 2008; Rao 2002; Tilak 2010).

In the context immediately surrounding the RTE Act, commentators and activists have highlighted the lumbering process that led to its enactment. They point to a chain of successive bills, beginning in 2004, drafted in response to Article 21A in the 86th Constitution Amendment Act, 2002 affirming the right of every child between the ages of six and 14 to free and compulsory education (Jha and Parvati 2010; Madhavan and Manghnani 2005). Upon the RTE Act's enactment, the 25% free seats provision and threats to close unrecognised private schools within three years have received much public attention and have been embroiled in controversy.

The public controversy lies in the de facto state subsidisation of private schools and in their presumed role in strengthening elementary education. Proponents of the free seats provision claim that it is an equity measure aimed at opening up a highly stratified school system to disadvantaged children, and also that it is the best way to achieve universal elementary education of purportedly better quality because of insufficient state sector capacity (Jain and Dholakia 2010). Critics maintain that the provision marks the most explicit institutional legitimisation of the private sector without sufficient effort to strengthen the decaying state sector and mount concerns regarding social equity (Jha and Parvati 2010; Ramachandran 2009). Complicating the implementation of the RTE Act are powerful private school lobbies that launched a Supreme Court case arguing that it impinged on their right to run their schools without undue government interference, and that the Act was unconstitutional. In April 2012, a Supreme Court verdict upholding the Act and its provisions was passed after a long and contentious hearing. It is within this broader context that the RTE Act is being implemented.

1.1 Underlying Logics of Contestation and Controversy

It is important to tease out the bases on which successive attempts were rejected, going back to the 1910 resolution and 1911 bill, as they point to deep social divides within which education was and is situated, and remain relevant to current analyses. The 1910 resolution was rejected on the basis of presumed insufficient tax resources and local demand (Balagopalan 2004). Regarding the 1911 bill, Krishna Kumar, in his book *Political Agenda of Education: A Study of Colonialist and Nationalist Ideas* (2005), provocatively highlights that since one of its provisions was to ban child labour, it was "met with significant resistance from many quarters, including several Maharajas and other 'prosperous Indians', fearful that it would interfere with the employment of children on the land" (cited in Little 2010: 5). In the current context, there is a strong sentiment that widespread middle-class flight from the state sector has fuelled a persistent lack of political will to introduce serious measures to attain the goal.

The mantras of insufficient demand from disadvantaged populations and scarce resources for education are recurring themes in the education and development literature (Srivastava 2010a). The former may be conceptualised as an instance of assumptions of false consciousness (Maile 2004; Woolman and Fleisch 2006) or that "poverty creates a dependent class that is entirely dependent and cannot make decisions" about schooling (Woolman and Fleisch 2006: 53). Critics of the dominant Indian education discourse contend that prevailing middle-class hegemony presents disadvantaged parents as favouring child labour over education (Balagopalan 2003; Kumar 2008).

From this perspective, disadvantaged groups are characterised as uninterested in schooling, unaware of its benefits, and unwilling to send their children to school, rather than questioning the institutional structures that inhibit access to schooling for them (for critiques see Balagopalan 2003; Balagopalan and Subrahmanian 2003; Banerji 2000; Dyer 2010; Srivastava 2008). However, there is research in India and elsewhere (e.g. Akaguri 2011; Fennell 2013; Härmä 2009; Probe Team 1999; Srivastava 2008; Woolman and Fleisch 2006) showing that disadvantaged groups are motivated and thoughtful in making schooling decisions, but face significant institutional barriers in access. Household-level results of this study show the persistence of stratified access in the early implementation of the RTE Act (Noronha and Srivastava 2013).

The second set of arguments connected to scarce resources must also be reassessed. While the renewed commitment to increase public spending for education to 6% of GDP in the Eleventh Plan Approach Paper (Planning Commission 2006: 57) was enthusiastically welcomed, public expenditure on education continued to stagnate over the Eleventh Plan period (2007-12). Tilak's (2010) detailed analysis of Eleventh Plan allocations found a disturbing trend. Central government allocations to education increased only modestly from 0.58% of GDP in 2006-07 to 0.71% of GDP in 2010-11. State governments, which typically spend more due to the financing structure of education, did not fare much better. Allocations increased slightly from 2.2% of GDP in 2006-07 to 2.6% in 2009-10 (ibid). The

argument of scarce resources to explain this low allocation is difficult to justify, at least over the Tenth Plan and going into the Eleventh, as India saw substantive macroeconomic growth rates of between 8% and 10% annually during this time (Planning Commission 2005, 2006).

In any case, given the aims of the RTE Act, it has been suggested that the 6% GDP target would be insufficient even if met, leading some to call for the need to involve the private sector to a greater extent (Jain and Dholakia 2009, 2010). This has been met with significant discontent by critics who question the quality of private schooling alternatives available to disadvantaged groups and the persistent underfunding of education, and raise the responsibility of the state to fulfil its obligation (Jha and Parvati 2010; Ramachandran 2009; Sarangapani 2009).

The increased role of private and non-state actors (including non-governmental organisations (NGOs)) in education in India has received attention for some time. Analyses of Tenth, Eleventh, and Twelfth Plan documents confirm the increased role of private and non-state actors through an undefined mechanism of public-private partnerships, referred to simply as the “PPP mode”, and a weakened role for the state in education finance, management, and regulation (Srivastava 2010b; Srivastava et al 2013). A review of the first decade of Sarva Shiksha Abhiyan also found the increase of the private sector during this time (Srivastava et al 2013). These findings are coupled with a general malaise on successive proposals to increase the role of NGOs and school-based committees to monitor school performance, rather than a twinned strategy of strengthening state inspectorates in an already highly decentralised system without appropriate checks and balances (Kumar 2008; Tilak 2007). The underlying view is that “governments find it convenient to use decentralisation [and privatisation] as a mechanism of abdication of its own responsibilities of educating the people” (Tilak 2007: 3874).

2 Research Design and Methods

Fieldwork for the full study was conducted between June 2011 and January 2012, with the bulk of the household- and school-level data collected between June and September 2011, and documentary analysis completed in April 2012. Data for the full study were collected through: a household survey of 290 households in one resettlement block and adjacent squatter colony in one selected Delhi slum; semi-structured interviews with 40 households drawn from this larger sample; semi-structured interviews with the most accessed local government and private schools by survey households; semi-structured interviews with officials and implementers; and documentary analysis of the RTE Act and rules and relevant documents. Here, we present only the methods and design for data reported in this paper.

2.1 Semi-Structured Interviews

Interviews with officials and implementers in our study were conducted between June 2011 and January 2012. Twelve officials, planners, and implementers were contacted for in-depth semi-structured interviews on the drafting of the Act, its provisions, and implementation. Of these, one interviewee refused to

continue with the interview mid-way. Thus, data were gathered from 11 interviewees in this group. At the central government, interviewees included planners, bureaucrats, and officials/academics actively involved in education and in the drafting and implementation of the Act. This was also attempted for state government and local levels, though we were less successful in securing access due to the politicised nature of implementation in Delhi. Representatives from local NGOs and the National Commission for Protection of Child Rights (NCPCR), who were responsible for coordinating, implementing, or monitoring RTE implementation, and the representative of a federation of private schools provided rich detail and a range of perspectives on the merits and challenges of the Act and its implementation.

Semi-structured interview schedules were tailored to suit the expertise of each interviewee from a bank of questions that were devised. In addition to their specific areas of expertise, all interviewees were asked about their understanding of key provisions of the Act; its merits; challenges related to the schooling of disadvantaged groups and how the RTE Act might meet them; challenges faced in the implementation process; and the role of private schooling in the education of disadvantaged groups in the new context. Interviews lasted from 45 to 90 minutes, with the average length of about an hour, and were conducted either in English or Hindi, according to the preference of the respondent. Interviews were conducted in interviewees' offices or another location convenient for them, either jointly by both main researchers (Prachi Srivastava and Claire Noronha) or by one main researcher and another member of the research team. All interviews were recorded and transcribed. Interview transcripts were coded and analysed by finding patterns and common themes.

2.2 Document Analysis

Official documents pertaining to the RTE Act, including draft versions of preceding bills, the final Act, central government model rules, Delhi rules, and associated government orders and notices, were analysed involving critical discourse analysis. The aim of the analysis was to focus on key policy moments “to investigate how practices, events, and texts arise out of and are ideologically shaped by relations of...and struggles over power; and to explore...the opacity of these relationships” (Fairclough 1993: 135). Questions guiding document analysis were focused on tracing changes in successive articulations to key provisions in the Act and preceding bills in order to determine the formal policy framework in principle. At the institutional level, this was used as a basis from which to interrogate emerging insights from semi-structured interviews with implementers and officials and schools on policy action and implementation/mediation in practice, and to match understandings about the RTE Act against official articulations.

3 Enacting the RTE Act: Concessions and Controversy

The 38 sections of the RTE Act specify the principles of the right to free and compulsory education for the purposes of the legislation (Sections 3 to 5); lay out the duties of the appropriate

government (central government, state government, or government of union territory), local authority, and parents (Sections 6 to 11); responsibilities of schools and teachers (Sections 12 to 28); specifications on curriculum and evaluation procedures (Sections 29 and 30); principles and structures for the monitoring and protection of children's right to education (Sections 31 to 34); and procedural guidelines on sanctions and power of action and rule-making (Sections 35 to 38). It also includes a schedule of quality norms and standards (Schedule 1) which all schools must meet.

Table 1 traces the history of the RTE Act's enactment. Interviews with officials in this study, some of whom had been in close association with the various Central Advisory Board of Education (CABE) committees and part of working groups responsible for successive redrafts, confirmed that the process was controversial in policy backrooms. Interviewees' opinions on the reasons behind the long process coalesced into two main themes. The first was a feeling that while there were some bureaucrats and officials who were genuinely committed to achieving the goal of free and compulsory education for all, as an institution, governments paid little more than "lip service" to concrete policy action. They contended this was related to a serious lack of political will.

Table 1: History of the RTE Act

1993	<i>Unnikrishnan vs State of Andhra Pradesh</i> . Supreme Court rules that right to education is a fundamental right following from Article 21 of the Constitution on the right to life.
2002	The 86th Constitution Amendment Act adds Article 21A affirming that every child aged 6-14 has right to free and compulsory education.
2004	CABE Committee constituted to draft RTE Bill, resulting in Free and Compulsory Education Bill, 2004. Bill withdrawn.
2005	CABE Committee redrafts resulting in Right to Education Bill, 2005
2006	Model Right to Education Bill, 2006 drafted. Disputes citing lack of funds and reservations in private schools. RTE Bill threatened to be shelved.
2008	Working group of Ministry of Human Resource Development redrafts resulting in RTE Bill, 2008. Cleared by Union Cabinet in October 2008.
2009	Modifications made. RTE Act ratified in August 2009.
2010	RTE Act comes into effect April 2010.
2012	Supreme Court declares validity of RTE Act and provisions in an April 2012 ruling in a case by private school lobbies that it is unconstitutional.

Sources: Jha and Parvati (2010); Madhavan and Manghnani (2005); Mehrotra (2012); Srivastava (2007); interview data.

The second was the assessment that most bureaucrats had little stake in invigorating the mass education system since most of them exited it for their own children's schooling. Interview data further unearthed that a number of concessions were made in the process of framing the Act, notably, financial concessions, concessions on quality indicators, and pre-primary schooling. These are presented below. We also trace the evolution and some of the internal contestation on the 25% free seats provision as revealed in our interview data.

3.1 Financial Concessions

Some interviewees claimed that high-level bureaucrats and politicians insisted that the Act would not have a chance of being passed without revising the financial estimates. Telling interventions were made by interviewees intimately tied to the technical and drafting processes. One interviewee felt that the process was delayed because rather than presenting the

financial requirements as a proportional expenditure, representing roughly 1% of gross national product (GNP) at the time, initial estimates were presented in absolute figures causing "a panic".

As a result, working committees tasked with providing technical financial estimates were asked to come up with alternative scenarios that were more "politically acceptable" or "palatable", for fear that a bill would not be passed, and even if it were, would not be implemented. When asked if this was in response to a genuine resource constraint, interviewees who were involved in background drafting processes and direct implementation of the RTE Act were not convinced. This is encapsulated in the following quote:

...government seems not to be willing to give so much pay-out to elementary education. And uhh, it wants some kind of uhh, I mean it can't say it openly [...] it cannot politically and openly complain that it has committed to the universalisation of elementary education, but uhh, for all practical purposes it doesn't commit as much resources as required. I mean the kind of... *a face-saving number is what it requires*. [...] [It] is willing to spend huge amounts as part of the... Pay Commission... when government got huge hike in their salaries, uhh, but it is not willing to pay for the Right to Education Bill.¹

Task groups were asked to reduce estimates by as much as 15%, according to one interviewee. According to some respondents, the presumed role of the private sector in meeting additional capacity had a determining role. The guiding logic was that since the private sector was expanding, it would account for additional capacity to meet the needs of out-of-school children, and thus, should be "encouraged" to expand. There was strong contestation and debate within technical committees highlighting that financial estimates were already calculated on a residual basis, i.e., estimates had taken into account the numbers of students absorbed in the private sector and existing government capacity, and figures were based on the net number of out-of-school children.

The results of this underestimation are being felt. Post-enactment, early financial analyses indicate the need for additional monies to fulfil the Act's provisions from Rs 1.71 lakh crore to Rs 2.31 lakh crore (*The Economic Times* 2010). Mehrotra (2012) provides a detailed analysis of the Ministry of Human Resource Development's (MHRD) initial Rs 1.71 lakh crore estimation to universalise elementary education, most of which would be considered Plan expenditure. However, he highlights a number of challenges in mobilising the funds, including: an increase in the fiscal deficit; increased allocations to universalise secondary and expand higher education, further squeezing resources for elementary education; and resolving how additional financing will be borne between the centre and the states:

Given that three-fourths of the total Plan expenditure on elementary education is met by the central government...the States' expectation will be that the Centre will meet the additional expenditure mostly on its own, since the RTE is a Central government legislation. That this will be a terrain full of contention between the centre and the states can be anticipated from the contentious nature of the division of funding responsibility that Sarva Shiksha Abhiyaan...has proved to be (ibid: 69).

3.2 Concessions on Quality and an Unfulfilled Right

In addition to financial concessions, concessions on quality and preschool education were highlighted by interviewees. While implementers and officials welcomed the fundamental

change to elementary education in spirit, noting no holding back or expulsion (Section 16), no examinations and child-centred pedagogy, the lack of pedagogic frameworks for implementation, qualified teachers, and teacher educators to support RTE norms, were raised as real concerns potentially jeopardising the quality of the system. Downward adjustments to Schedule 1 quality norms to fall in line with revised financing estimates were also highlighted, in addition to other omissions. For example, “desirable” standards of a preschool facility and the availability of electricity, telephone, and at least one computer in every school, which appeared in Schedule 1 of the Right to Education Bill of 2005, were omitted by the time the Act was passed.

Finally, the lack of adequate and timely grievance redressal mechanisms was highlighted as a major shortcoming in upholding the compulsions of the Act to guarantee the right to education. Data from implementers in our study revealed a number of contraventions against the Act that were raised in public hearings and lodged as formal complaints by parents, including severe corporal punishment (against Section 17), caste-based discrimination (against Section 9(c)), collection of capitation fees (against Section 13), and absentee teachers and principals, drunkenness, and low teaching activity (against Section 24). The process of their redressal was unclear and protracted.

Preschool education was highlighted as the single biggest concession by interviewees, which they felt represented an unfulfilled right. Analysis of the Free and Compulsory Education Bill, 2004, Right to Education Bill of 2005 and 2008, and the 2009 RTE Act show a lack of effective policy action in this area. While the 2004 bill states that the appropriate government should “take all necessary steps to ensure coordination, convergence and synergy among all programmes having a bearing on free and compulsory education, especially programmes relating to early childhood care and education” (Government of India 2004: Section 3), no clauses are dedicated to it. The 2005 RTE bill is more explicit, calling on Article 45 of the 1950 Directive of Principles: “under Article 45...the State shall endeavour to provide early childhood care and education for all children until they complete the age of six years” (Government of India 2005: preamble).²

However, this was later formulated in more tentative terms in Section 11 of the 2008 RTE bill, and reproduced in the RTE Act: “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 preschool education for such children” (Government of India 2009: Section 11, emphasis added). It is seen as one of the weaker clauses of the Act, and some commented on the lacuna as early as the first 2004 bill (Tilak 2004).

Many interviewees viewed the lack of fully integrating preschool education as a major obstacle to achieving universal education, particularly for the most disadvantaged and never-enrolled. Some implementers and officials felt that while

scarce resources were used as a justification, the social distance between policy elites and disadvantaged groups led to the failure of fully institutionalising preschool education in the Act. This view is best encapsulated in the following quote by one senior official recounting an experience three to four years prior:

I’m arguing why...are we not giving more thought to ensuring preschool education actually gets into the RTE because it was still, it was not an Act then...it’s a bunch of IAS Officers...they say, ‘But...I didn’t go to pre-primary school and I’m doing fine’. I said, ‘Excuse me, but you had *literate* parents. The children who are going to school now are the children with functionally illiterate parents [...] they are not prepared for schooling at all [...] they are undernourished children [...] Their neural connections were not formed like your neural connections were formed between the ages of zero and five...they need this much more than you do. [...] MHRD said, ‘Nothing doing, no pre-school education [...] don’t want anything to do with it...’

ps: Why?

[...]

Why? Because well, have enough to do. Can’t cope.³

As it stands, Section 12 of the RTE Act specifies that where a school operates, admissions to pre-primary sections should be in accordance with the Act. For government schools, this means admission on a no-fee basis; for private-aided schools, in line with the government grant received for expenses and a minimum of 25% no-fee admissions; and for private unaided schools, in accordance with the 25% free seats provision. However, private pre-primary provision that is not part of a formal school is not covered in the Act. This excludes a large number of providers.

At the time of data collection, the Right of Children to Free and Compulsory Education Amendment Bill, 2011 was introduced as a private member bill in the Rajya Sabha, which proposes to expand coverage from three to 18 years. At the time of writing, it was still unclear what further action will be taken on the Act, but there are indications that a stronger focus on preschool education is emerging at the level of central planning. For example, the Twelfth Plan sets a target for “at least one year of well-supported/well-resourced preschool education in primary schools” (Planning Commission 2013: 51) and the integration of preschool education with primary schooling as a strategy for elementary education (ibid: 58).

3.3 The 25% Free Seats Provision

Two aspects of the evolution of the free seats provision in the RTE Act are noteworthy – the phased manner in which its implementation is proposed within the school, and the addition of social disadvantage among criteria for eligibility. Its articulation in the 2004 Bill was first specified as a figure *not exceeding* 20% of seats, but applicable to “the total strength of the school in any class” (Government of India 2004: Section 35(1)). Only schools that had been in operation for longer than five years were subject to it, and only children from economically disadvantaged groups, i.e., “families below the poverty line” (ibid) were eligible to apply.

The 2005 RTE Bill expanded the base figure to *at least* 25%, but as retained in the 2009 Act, made it applicable to children admitted to Class 1 until they complete elementary

education (Government of India 2005: Section 14), phasing the initial implementation. Here, eligibility criteria were broadened to include “a child in need of care and protection” (ibid: Section 2(1)(ss)), in addition to “children belonging to weaker sections” defined as those whose parents/guardians’ income falls below a minimum limit defined by the government (ibid: Section 14). The former clause was omitted in the 2008 Bill and the RTE Act, and has been criticised as excluding orphaned and vulnerable children. The 2008 Bill, however, extended the provision to preschool classes in formal schools, which was retained in the RTE Act.

The final articulation in Section 12(1)(c) of the 2009 Act is a near verbatim clause of Section 12(1)(c) 2008 RTE Bill, which set the quota to *at least* 25% of the strength in Class 1 (and in pre-primary sections, where applicable) until completion, for children belonging to “weaker section” and with the substantive addition of “disadvantaged” groups, the latter specified as a child belonging to “the Scheduled Caste, the Scheduled Tribe, the socially and educationally backward class or such other group having disadvantage owing to social, cultural, economical [sic], geographical [sic], linguistic, gender or such other factor, as may be specified by the appropriate Government, by notification” (Government of India 2009: Section 2(d)). A child belonging to weaker sections is one whose parent/guardian’s income is lower than the minimum limit specified by the appropriate government (ibid: Section 2(e)). In practice, this commonly refers to annual income below Rs 1 lakh as set by the Ministry of Finance.

Delhi Government Rules

Of relevance to our study were also the Delhi rules. The Delhi School Education (Free Seats for Students Belonging to Economically Weaker Sections and Disadvantage Group) Order, 2011 (2011 Delhi Free Seats Order) (Government of NCT of Delhi 2011) was issued in January 2011 during the period of our study. We note some subtle but important nuances between the RTE Act and the Delhi government order. Economically weaker sections (EWS) are defined as those with a maximum annual income of Rs 1 lakh “from all sources” with the added minimum three-year residency requirement in Delhi (ibid: Section 2(c)). The addition of “all sources” restricts eligibility of families on the borderline who may not be poor enough, but in real standard of living terms in Delhi, may also not be “non-poor”. The added residency requirement is particularly relevant to Delhi as it attracts a large number of seasonal and migrant workers who are likely to be adversely affected, but who may fall within income eligibility.

The scope of “disadvantaged groups” is also narrowed to include children belonging to scheduled caste, scheduled tribe, and Other Backward Class groups “not falling in the creamy layer”, and children with special needs as defined in the Persons with Disabilities (Equal Opportunities, Protection and Full Participation) Act, 1996 (ibid: Section 2(d)).⁴ Excluding the creamy layer, i.e., individuals belonging to the above-mentioned caste groups but earning above the minimum income, was to ensure that, in principle, the poorest within those

groups are targeted. However, the omission of gender and perhaps geographic factors (i.e., deprived areas/slums in Delhi), for example, is somewhat perplexing.

One of the most contentious clauses of the Act, officials and implementers had mixed views about the free seats provision upon its enactment and in policy backrooms during various drafting processes. Some saw it as an explicit legitimisation of the private sector that relegated the state sector to a permanent state of lesser quality, since they felt active measures to increase public sector quality were missing from the Act:

[The] Implication of the quota is that you [the state] are not taking care of your own schools.⁵

Others saw the quota as a way to make private schools more accountable to the state. This was raised regarding schools that were seen to have had a “free ride” for too long regarding land allotments at concessional rates, obtaining recognition without meeting norms, or charging excessively high fees. In Delhi, unaided schools that were allotted land at concessional rates from the Delhi Development Authority were already meant to be instituting a similar provision “to ensure admission to the students belonging to the weaker sections to the extent of 25 per cent” (Juneja 2005: 3685). Juneja highlights that most of these schools were high-fee elite private schools, and that there was widespread doubt on the fulfilment of this term (ibid). This was confirmed in interviews with officials in this study.

In 2004, a Supreme Court judgment instructed the Director of Education to examine whether conditions of the allotment were being met, and to take action against schools found not to comply. According to interviewees in our study, only a minority of unaided land-allotted schools made an effort to institute the allotment quota, and strict action against them was not taken. The feeling was that this was because of a general laissez-faire attitude towards the expansion of the private sector in view of more pressing Sarva Shiksha Abhiyan goals since the early 2000s, and the considerable political clout that many of these older, more established, elite schools had.

In policy backrooms, supporters of the 25% free seats provision strongly argued that, if institutionalised in the RTE Act, it would compel the private sector to share the responsibility of educating the disadvantaged. By consequence, the disadvantaged may have access to some better quality, reputed private schools. One senior official stressed that the free seats provision should be seen as an unofficial tax on high-income earners who evaded paying full income tax, and who could afford to absorb the cost of increased fees in high-fee schools to accommodate low-income children:

I’m here speaking to the principal that, ‘You know people who pay fees in your school, the children of the rich, how many of those are actually paying their fees in cash? They’re paying their fees in cash because they are making money in cash. They would ... your fees are so outrageously high, but people are making money in cash so they’re paying in cash, they’re not paying taxes on that. So if now you increase your fees to accommodate 25% additional poor children, well sorry, the rich are not paying taxes, this is their way of paying taxes.’⁶

The official line as expressed by a senior education official was more idealistic – that in spirit, the free seats provision was

an equity measure to create a common space in schools across class and caste divides. This was also indicative of the sentiments of some of the earliest drafters of previous bills and initiatives:⁷

The larger objective is to provide a common place where children sit, eat and live together for at least eight years of their lives across caste, class and gender divides in order that it narrows down such divisions in our society. The other objective is that the 75% children who have been lucky to come from better endowed families, learn through their interaction with the children from families who haven't had similar opportunities, but are rich in knowledge systems allied to trade, craft, farming and other services, and that the pedagogic enrichment of the 75% children is provided by such intermingling.⁸

There was, nonetheless, broad-based scepticism among interviewees on realistically achieving social integration through the free seats provision because of deep social fissures, but also because of delays on the part of states to enact implementation rules and procedures, and the lack of preparedness of principals and teachers in instituting child-friendly inclusive pedagogic practices. This was even acknowledged by the government official quoted above. The strongest public controversy to the provision came from private school lobbyists. One interviewee, an influential lobbyist, stressed that expanding the eligibility criteria to include "disadvantaged groups" was a political ploy by the government to secure votes along caste-based lines:

They've put a provision in the Right to Education Act that a freeship should be given to 25% of children from economically weaker sections. I'll give it, I have no objection but who is going to guarantee that tomorrow these politicians won't increase it from 25 to 50, from 50 to 75 for their vote bank? [...] This 25% EWS that they're talking about is fine – economically weaker section – whether they belong to any caste. But then you put in a provision [...] they included the word 'disadvantaged' [...]

When we are talking about EWS, where did SC, ST, OBC come from? [...] The government is doing this to create its vote bank.⁹

Nonetheless, the vast majority of implementers and officials in the study saw the inclusion of socially disadvantaged groups in the eligibility criteria as institutional recognition of the multifaceted nature of exclusion. However, the most involved implementers noted the tension between the universality of the Act on the one hand, and the specificity of how education exclusion is experienced by particular groups, on the other. From this perspective, monitoring differentiated patterns of access is essential to ensuring that gaps are not perpetuated:

...one of the actual challenges for those implementing the Act...with respect to the issue of exclusion or disadvantage, is the Act, of course,

is in the rights framework and it's a universal, aah, framework in that sense. And you know, the kind of perennial question in a sense of how to deal with, umm targeted ahh groups or targeted regions in a universal frame is therefore, becomes a different kind of challenge. [...] Earlier on, you know, it was very easy to go in to and, you know, talk specially about Dalits or specially about Adivasis and ask for in particular interventions, specific interventions for them. [...]

...now you have an Act, now it's everybody's right...

[...] ...so it's Dalits' rights as well. So now what is it? So now, what's the problem?¹⁰

4 Final Comments

The RTE Act mandates fundamental changes to elementary education. Beyond the 25% free seats provision and the role of private schools, officials and implementers repeatedly noted the real significance of the Act is that, taken in its entirety, it necessitates a fundamental reorientation of conceptualising education as a right, which cannot be ignored. The removal of access barriers (e.g., extending the period of admission, relaxation of documentary requirements, and elimination of admission tests); access to a formal school with minimum teacher and infrastructure requirements; child-centred pedagogy (e.g., prohibition of expulsion, no detention policy, continuous comprehensive evaluation); and joyful learning (anti-discrimination, prohibition of physical punishment or mental harassment) signify ideals of securing meaningful access for all. However, in the early phase of implementation, interviewees felt that public attention captured by private school lobbies inhibited understanding of the full implications of the Act. Discussions on some of these other aspects, particularly, pedagogic implications are now beginning to emerge.

As our research showed, contestation and controversy were as much a part of the process of drafting and passing the Act in policy backrooms, as in public debates. This led to certain fundamental concessions in the final legislation. On one level, these are expected parts of the education policymaking process, but their specific contours are essential in understanding the content of particular education policies, why and how they came to be, and their potential in redressing inequities in education systems. Ultimately, the RTE Act is part of a complex process in which its enactment marks not the end, but the beginning of a new phase of institutional evolution in education in India. Its realisation will undoubtedly be a process embroiled in further contestation and controversy. This should not be surprising as most worthwhile causes usually are.

NOTES

- 1 Interview with technical expert; emphasis added.
- 2 There is some confusion on this point. The legislative brief states that the 86th amendment also modified Article 45, which now reads as "The State shall endeavour to provide early childhood care and education for all children until they complete the age of 6 years" (Mahadevan and Manghnani 2005).
- 3 Interview with senior official.
- 4 The Persons with Disabilities Act, 1996 defines "disability" as: (i) blindness; (ii) low vision; (iii) leprosy-cured; (iv) hearing impairment; (v) loco motor disability; (vi) mental retardation; (vii) mental illness (Government of India 1996:

Section 2(i)), and a "person with disability" as "a person suffering from not less than forty per cent of any disability as certified by a medical authority" (ibid: Section 2(t)).

- 5 Interview with technical expert.
- 6 Interview with senior official.
- 7 In fact, the Kothari Commission had advocated freeships in private schools (then associated only with privileged classes) as a way of ensuring "social cohesion" and to prevent "segregation of social classes".
- 8 Personal communication with government official.
- 9 Interview with private school lobbyist (translated from the original in Hindi).
- 10 Interview with implementer.

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