

The Question of “Quality” in Education: Does the RTE Act Provide an Answer?

Archana Mehendale

Visiting Associate Professor, School of Education, Tata Institute of Social Sciences, Mumbai

Abstract

Policy discourse on education in India has moved from the question of “access” to “quality” of schooling. The notion of quality is undefined, yet a complex aggregation of characteristics including physical infrastructure, learning outcomes and efficiency have emerged as critical policy concerns. Drawing from available literature that critiques the notion of “quality” in education, the paper proposes a set of parameters at four levels- education system, school, teacher, student – that can help to understand the notion of quality. The paper further analyses the provisions of The Right of Children to Free and Compulsory Education Act, 2009 to understand if quality is provided for in the legislation and if so, in what manner. Finally, the paper comments on the gaps and potential of the legal provisions in answering the question of quality in education.

Background

Most of the countries that were able to universalise education in the last century did so by adoption of free and compulsory education legislation. Such legislation was effective in curbing child labour and bringing children into schools. Since colonial times, India had provincial legislation that allowed the provincial governments to notify areas where “free and compulsory” education could be provided. After Independence, although these legislation were carried forward by state governments¹, their implementation remained weak and the provisions remained largely on paper (Law Commission of India 1998, p.70). Weiner (1991) explained this lack of implementation as a result of the deeply entrenched caste system. He argued that by not providing free and compulsory education, differentiation among social classes was being maintained with the aim of preserving the existing social arrangements. Juneja (2003) showed how the officials responsible for enforcing the legislation were not aware of the provisions and their mandate and how the enforcement of compulsory education was “actively discouraged” from early 60s. The primary purpose of these legislation was to bring children to schools and thus was

¹ 19 states and Union Territories had legislation on free and compulsory education as per the 165th report of Law Commission of India (para 6.2). These were adopted between 1917 and 1995 and were loosely modeled on the Delhi Education Act, 1960 with some state level variations. See also Juneja (2003) for a list of pre-independence and post-independence legislation on compulsory education.

limited to ensuring access. Nevertheless, “access” as a goal was relevant at a time when rates of literacy were as low as 12% when India gained Independence and when education exclusion on the basis of caste, ethnicity, gender and disability was deep-rooted. These laws made no reference to quality of education or what kind of schools were the children to be brought into. Yet, in some way, they were responsible for ushering social change by bringing the excluded groups into the formal education institution of the school, about which there were no prescriptions.

In the nineties, with the Supreme Court reading right of children to receive free and compulsory education up to the age of 14 years into the fundamental right to life, there was paradigmatic shift in the way education was treated. The Constitution of India was amended in 2002 to insert a new Article 21 A under Part III Fundamental Rights of the Constitution which read, “the State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine”. One of the key implications of the amendment was paving a path from discretionary state level legislation to a rights based central legislation that gave effect to the justiciable Article 21 A of the Indian Constitution. The enactment of The Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as the Act) and its coming into force in 2010, operationalised this new right to education for children between the ages of 6 and 14 years.

The new Act marks a significant departure from the earlier state-level enabling legislation on free and compulsory education. First, it places a clear legal obligation on the state to provide education to all unlike the discretionary provisions of the earlier legislation. Second, it goes beyond “access” and specifies norms about the school itself irrespective of whether it is run by government, private or community. Third, it specifies mechanisms for implementation and monitoring at all levels of the government. Fourth, by not allowing for “reasonable excuses for non-attendance”, the new Act does not leave “escape hatches” for children's non-participation in schooling like the earlier state laws had done.

The Constitutional Amendment as well as the Act have been politically significant milestones as they were unanimously passed by both Houses of the Parliament. Legally, the Act has surmounted the federal dynamics and provided a single legislation that over-rides the prevailing state legislation that may exist on the same subject. Given its political and legal significance, one of the criticisms raised against the RTE is that it does not offer quality education and although it aims to go beyond “access” it fails to address the growing concerns about school quality. In other words, it is argued that the Act focuses on access alone and does not guarantee that children who come to school receive education of an acceptable quality. Another argument is that it does not provide education of equitable quality to all and in a deeply stratified society unless quality is equitably provided for, the right would remain incomplete. This paper attempts to look at these arguments by first examining the notion of quality in available literature and then analysing if the Act provides for quality in education.

Contours of the “Quality” Discourse

Traditionally, justification of the role of state in public schooling has been offered on at least three counts. First, political reasons such as citizenship building, creation of national identity and promotion of national goals; second, economic reasons given that primary education has positive externalities, suffers from credit market deficiencies and helps build human capital; third, social reasons such as ensuring social justice and equity. In the emerging neo-liberal discourse that has implications for education policy, this justification has come under critical examination and the state's role in being the sole guarantor of public goods function has been questioned. The question of quality of education has been pivotal to such a challenge and it is asserted that the state need not retain the key co-ordination functions of provision, funding and regulation of education. Fundamentally, the question of quality has been posited at the level of the education system alongside concerns about efficiency, transparency and accountability and at the level of students alongside concerns of their learning outcomes and choice.

Literature highlighting the need to address the quality dimension in contemporary times has brought out several strands of arguments. First set of arguments discuss the importance of education quality, particularly cognitive skills, in improving individual earnings, distribution of income and contributing to economic growth (Hanushek and Woessmann, 2007, p.4) and indicates that school enrolment and school attainment do not sufficiently explain economic growth. This argument suggests that just increasing school resources is not an effective solution to raise quality because it requires structural changes at institutional level. Second set of arguments show that for securing “access reforms” the state needs to be a key player whereas for ensuring “quality reforms” the state needs to partner with non-state actors implying lack of state capacities to improve quality of education. The third set of arguments focus on the inability of the public school system to deliver on learning outcomes, despite the investments, raising questions on efficiency and accountability. These arguments are supported by assessments reports by Annual Status of Education Report (Rural) (2013), Educational Initiatives and Wipro Applying Thought in Schools (n.d.) and Planning Commission (2010) that have highlighted children's inability to read and write as per the expected competency for their grade. The fourth set of arguments point to the dysfunctionality of the system and irrelevance of education which is manifested in high percentage of school drop outs as well as educated unemployed youth. While this may not be solely due to the flaws in the education system and may have to do with the socio-economic and structural reasons, the role of education itself in causing these problems is also articulated.

These questions of quality have been raised not only in the context of India but also in relation to other developing countries and have been accompanied by policy prescriptions on granting school autonomy, promoting school choice through vouchers, fixing teacher accountability and installing a system of incentives-disincentives based on student learning outcomes. The focus on the agenda of quality has been critically

questioned by Velaskar (2010) who argues that “equality of educational opportunity” has given way to “quality” which is only a reduced and tokenistic commitment to equality. Jain and Saxena (2010) question use of public choice theory and the doctrine of efficiency to measure quality. Sarangapani (2010) critiques the current studies on quality as they are limited to looking at only three dimensions —achievement test scores of children in mathematics and language, school infrastructure and teacher absence. Another argument questions holding up private as the marker of quality, whereby the discourse gets steered by what the market dictates rather than social and political aims of education. Vedder (1994) shows how the globalised measures of quality of education through international assessments and testing is leading to globalisation of curriculum and discusses the involvement of international interest groups in defining and determining the quality of education in developing countries.

Do the National Education Policies Provide for Quality?

The policy framework, laid down at the national level since the Indian Education Commission (1964-66) submitted its report (National Council for Educational Research and Training, 1970), made various references to quality in education although the phrase was not expressly defined. The first National Policy on Education, 1968 (Government of India, 1968, pp.38-39), acknowledged that radical reconstruction of education was “essential for economic and cultural development of the country, for national integration and for realising the ideal of a socialistic pattern of society” (para 3) and that this would require transformation of the system such that it became more relevant and accessible to people and that there would be “sustained and intensive efforts to raise quality of education at all stages” (para 3). While “quality” was articulated as a prerequisite for transformation, the policy provisions implied that quality in education related to fulfillment of “public” goals of building “character and ability”, “commitment to national service and development”, for “creating common citizenship and culture” and for “national integration”. The teacher was seen as central to the production of “quality”. It said, “Of all the factors which determine quality of education and its contribution to national development, the teacher is undoubtedly the most important” (para 4.2) and proposed that they be given an honoured place in society and their service conditions and emoluments be commensurate to their qualifications and responsibilities. While the above mentioned parameters can be seen as “system-related”, the policy also commented on quality at the individual student level wherein it held that continuous assessment be done to help the student improve performance rather than certifying quality of performance at a given time through examinations.

The National Policy on Education, 1986 and revised policy formulation of 1992 (Government of India, 1992) resolved to provide free and compulsory education of “satisfactory quality” to children below 14 years before the twenty first century (para 5.12). It also committed to establishing a national system of education that would provide

education of a “comparable quality” to all irrespective of caste, creed, location and sex (para 3.2). Apart from these goals on quality, the revised policy formulation of 1992 provided several parallel streams of education; one, was the establishment of non-formal education at primary level (para 5.8 to 5.11), the other was stipulation of “minimum levels of learning” (para 3.7) and basic infrastructure provision (comprising of a three teachers, three classrooms, basic teaching learning material and blackboard) through “Operation Blackboard” (para 5.7) in all primary schools and the third was the establishment of Navodaya Vidyalaya at the secondary level as institutions of excellence based on merit (para 5.15). This idea of differential quality norms has been critiqued by Sadgopal (2006). The policy also provided for child-oriented pedagogic practice (para 5.6), teacher and student accountability (para 7.3). The idea of efficiency and effectiveness was hinted only for technical and management education (para 6.15) because it was expensive. Thus, apart from the goal of quality, “quality norms” were implied at the level of education system, school, teacher and students.

What is the Notion of Quality?

A review of literature on the meaning of quality in education reveals that while we have several studies commenting on quality, there is a lack of convergence on the notion of quality itself, on what it entails and how it should be measured. For Sarangapani (2010), “quality in education” has to do with “making an assessment of the worthwhileness of a programme/system of education” and should fulfill two requirements; first, describe the education programme “in a way that enables them to be understood and assessed comprehensively from the point of view of all those characteristics that are relevant to understanding their educational qualities and worth, and secondly, render them comparable to each other”. She examines the notions of quality as elaborated upon by Naik (1975), Winch (1996), Kumar (2010) and Alexander (2008). She argues that for Naik and Winch, the notion of quality was closely linked to the public character of education. She points out that Kumar rejects the neo-liberal agenda of quality (accountability, transparency, competitiveness) which cannot give an understanding of educational quality. On the other hand, autonomy of the teacher and learner on the learning process, capacity building for equality and meeting social goals of education is important. She points that for Alexander, the notion of quality relates to the education system. Sarangapani surmises that there are various characteristics of the quality, “all of them are necessary, but none, clearly is sufficient”. On the basis of the frameworks on quality proposed by these four writers, Sarangapani (2010) proposes a set of characteristics that can explain quality in education. These are: [1] Aims of education, [2] Provisioning/design/capacity, [3] Curriculum, [4] Standards and achievement, [5] Practice, and [6] Accountability.

Vedder (1994) explains that quality in education is “the extent to which, and the manner in which, aims and functions of education are achieved or realised. Aims are the anticipated effects of learning, and functions refer to what schools are expected to

accomplish apart from learning as such, for instance keeping children off the street and selection for further positions in an educational or job career". Mortimore and Stone (1991) discuss the complexity and multi-dimensionality of the concept of quality in education and like Sarangapani suggest its implicit normative and comparative elements wherein the context is an important variable. However, they themselves put forth "measureable" school level ingredients of quality, namely, [1] buildings and resources, [2] pedagogy, [3] achievement outcomes and [4] subsequent achievements of pupils indicating the importance of studying long term outcomes.

Winch (1996) outlines four distinct approaches to quality, first, where quality is equated with excellence; second, is a product-based approach where quality translates into "precise and measurable characteristic of the product itself;" third, where quality is determined by its users and fourth, where quality is understood as "value for money".

Tooley and Dixon (2003, 2005) equate quality with parental preferences wherein it is somewhat simplistically assumed that English medium schools offer quality education compared to the vernacular medium government schools because parents prefer English medium schools. That the demand of the market should shape the idea of quality rather than the social and political goals of education contemplated at both the individual and societal level needs to be questioned. This postulation leads us to explore whose job is it to define quality and how do the multiple notions of quality held by various stakeholders (at local, national and international levels) coalesce? Given that these multiple notions of quality could potentially be in conflict, whose mandate would it be to arbitrate among these competing notions of quality. While Tooley and Dixon (2003, 2005) and other neo-liberal advocates would argue that these be determined primarily by the market, the "public-merit good" character of elementary education would necessitate the state to arbitrate on the notion of quality that it would hold up while fulfilling its co-ordinating functions of provisioning, funding and regulation.

Given the range of providers working in distinctly different scenarios, should the notion of quality be objectively defined for a common application or should it be subjectively formulated and differently measured and demanded from different institutions. Sarangapani (2010) stresses on the comparability as an essential requirement and that comparability would require measuring the diverse spectrum of schools on all ingredients of quality. This would entail subjecting all kinds of schools to the same common criteria of quality rather than measuring the government schools on parameters of private school which is itself equated with quality.

On the subject of choice leading to better quality of learning and private schools being more efficient and hence of better quality, Goldhaber (1996) argues that "with a given set of schooling resources there is no reason to believe that an average private school would do a better job of educating a group of students than an average public school educating that same group of students". Thus, quality would then be "provider-proof" and with importance being placed on other ingredients that help to co-create a particular kind of quality. Winch (2010) questions quality of education as a system being

measured as inputs received and outputs delivered as it obscures the key issues of quality and the interdependence of inputs and outputs.

While literature on quality, interchangeably refers to quality of schools as well as quality of education systems, Sarangapani (2010) raises the question of what should be the “unit of quality” - whether it should be “system to school” or “school as a system” when one discusses quality? She also notes that when comparing quality of schools (public versus private) it is important to recognise that private schools may function as autonomous units, while public schools are integrally placed within the larger education system and this impinges upon the production of their quality.

Drawing together the various strands emerging from the literature on the notion of quality, particularly the formulation of Sarangapani (2010), this paper proposes a set of parameters that can be utilised as a tool to analyse various provisions of the Act. These include: [1] Aims of education, [2] Standards of Provisioning, [3] Pedagogy and learning environment, [4] Learning Outcomes, [5] Accountability and participation, [6] Efficiency. The unit of analysis for each of these parameters is given in Table 1.

Table 1: Quality parameters and unit of analysis

Quality Parameter	Unit of analysis
Aims of Education	System
Standards of Provisioning	System and School
Pedagogy and learning environment	System, School and Teacher
Learning Outcomes	School and Student
Accountability and Participation	System, School and Teacher
Efficiency	System and School

What Kind of Quality Does RTE Provide?

As pointed earlier, the Act departs from the older free and compulsory education legislation insofar as they go beyond ensuring access and in fact lay down normative prescriptions on the kind of school the child attends, what the child learns, how the child is taught and assessed as well as how is the school managed. Thus, the argument that the Act provides only access and not quality misses an important point of distinction that the Act enjoys in comparison to the earlier set of state legislation. The assertion that the Act does not provide for quality ignores the fact that the notion of quality is indeed spelt out and it is this notion of quality that needs to be problematised, if at all, and opened for critical debate. It may also be noted that the idea of quality that the Act purports effectively lays down a single centrally prescribed framework which can only be improved upon

by the state governments through their respective delegated legislation. In other words, it becomes a common minimum floor that all elementary schools in the country have to meet. Interestingly, this quality floor is applicable to schools run by private, not-for-profit, local authorities as well as the government entities. In *Society for Unaided Private Schools of Rajasthan v. Union of India*², the Supreme Court held that “all schools established prior to the commencement of the said Act are thus obliged to fulfill the norms and standards specified inter alia in Sections 25, 26 and the Schedule of that Act. State is also expected to first weed out those schools which are non-performing, or under-performing or non-compliance schools and upon closure of such schools, the students and the teaching and non-teaching staff thereof should be transferred to the neighbourhood school.” It further held that such closure of schools will allow government to reorganise its financial flows and ensure quality education. This is a significant departure from the existing policy framework that did not require the government schools to adhere to a set of infrastructure standards like those prescribed for private schools seeking government aid as well as private schools that did not seek aid but sought only recognition. This implies that the state should now not only “provide” as per the quality norms but also “regulate” compliance of its own schools alongside those run by non-state actors. Another interesting dimension that emerges from the judgment is the Court's clubbing together of “performance” of schools with “compliance” of norms by the schools as the criteria warranting their closure. Both kind of schools are put in the same basket that the government needs to weed out.

If the set of parameters on quality described in Table 1 are used to review the provisions of the Act, the extent to which the Act provides for quality becomes evident (see Table 2).

Table 2: Quality parameters and statutory provisions

Parameters	Unit of Analysis	Provisions of the Act	Remarks
Aims of Education	System	Sections 29 (2) (b, c, d),	Curriculum should lead to all round development of the child, building child's knowledge, potentiality and talent and development of physical and mental abilities to the fullest extent.
Standards of Provisioning	System School	Sections 6, 23, 25 Section 19	Neighbourhood school, teacher qualifications, teacher-pupil ratio Norms and Standards on school infrastructure related to number of teachers, building, working days and hours, teaching learning equipment, library and play material

² *Society for Unaided Private Schools of Rajasthan v. Union of India* (2012) 6 SCC 1

Pedagogy and learning environment	System	Sections 29 (2) (e, f, g)	Curriculum and evaluation providing education in mother-tongue as far as practicable, making the child free of fear, trauma and anxiety and helping the child to express views freely
	School	Sections 16, 17	No detention, no expulsion, prohibition of physical punishment or mental harassment
	Teacher	Section 24	Duties of the teacher
Learning Outcomes	School and Student	nil	
Accountability and Participation	System	Sections 31 and 32	Monitoring of the implementation of the Act by Children's Commissions and redressal of grievances by local authority
	School	Sections 21, 22	School Management Committees for government schools that would prepare School Development Plans
	Teacher	Section 24 (2)	Teachers defaulting on performance of duties is liable for disciplinary action under service rules
Efficiency	System	Sections 12 (1) (c) & (2)	Admission upto 25% of seats in private unaided schools to children from weaker sections and disadvantaged groups and government to reimburse per-child-expenditure
	School	Sections 25 (2), 26, 27	Maintenance of Teacher-Pupil ratio, filling vacancies of teachers, non-deployment of teachers for non-educational work

As per Table 2, the quality provisions under the Act are found at the level of the system, school and the teacher. The parameter of learning outcomes which can be analysed at the level of the student is not included in the Act. The aims of education are stipulated at the level of system but focused on the student and what education should do for him/her. The systemic goals of citizenship building or national integrity which was evident in the National Policy on Education 1992 are not evident in the Act, not are economic goals of investment in human resources. The standards of provisioning are at the level of the system and school. The standards at the level of the system include establishment of neighbourhood schools, appointments of qualified teachers and maintenance of teacher-pupil ratio. At the level of school, the standards include infrastructure, teachers, learning material and minimum working hours. The parameter of pedagogy and learning environment is laid out at the level of system, school and the teacher. At the level of the system, the academic authority is mandated with the task of laying out the curriculum and evaluation procedures on the basis of principles such as mother tongue education,

learning without fear and encouragement of self-expression. At the level of the school, the Act provides no detention and no expulsion of any student and prohibition on physical punishment and mental harassment. The Act provides duties of the teachers which relate to regularity, punctuality, completion of curriculum, providing additional instruction to children and interaction with parents. The parameter of accountability and participation is also provided for at the level of the system, school and the teacher. At the level of system, accountability is provided through monitoring by independent commissions for children and redressal of grievances by local authorities. Accountability and participatory planning is provided through establishment of School Management Committees for government schools. Teachers' accountability is provided for by allowing disciplinary action against teachers defaulting on performance of their duties. The parameter of efficiency can be found at the level of the system and the level of the school. At the level of the system, the recognition of duty of private unaided schools to give admission to 25% children from weaker sections and disadvantaged groups with the government reimbursing private schools at government per-child-expenditure rates, is a way in which the government has tried to build efficiency. At the school level, maintenance of teacher-pupil ratio, filling of vacancies and non-deployment of teachers for non-educational purposes are provided under the Act. Thus, the Act does provide for “quality” in varying measures although the inter-parameter linkages are not clearly evident. For instance, it is not clear how the aims of education provisions would be fulfilled given that the other parameters may not sufficiently facilitate or contribute to such a fulfillment of the aims of education. Furthermore, the enunciation of provisions on various parameters does not imply that the provisions are adequate to meet the parameter. For instance, the provisions of the Act that are listed under efficiency may not adequately cover the idea of the efficiency itself. Critics may therefore argue that efficiency is poorly or inadequately provided for under the Act.

Quality in the International Normative Framework:

While the foregoing section examined the provision of quality in domestic legislation, it would be useful to review how quality in education has been provided for at the international level. The international normative framework on education can be drawn from two parallel realms; one, international law and second, political compacts. These are distinct in some ways (as indicated in the Table 3). Although there are a few overlaps in what these two realms provide on education, Tomasevski (2005) argues that the political realm dilutes significantly what has been provided in the legal realm and this dilution has been scripted by the international financial institutions. However, it may also be noted that the legal realm has offered primarily “binding” provisions on education, whereas the political realm has provided the means in the form of monetary resources and technical assistance that some of the state parties were unable to independently mobilise. As a result, it may be argued that the political realm on education has emerged to be more significant than the legal realm providing a right to education.

Table 3: Differences between legal realm and political realm

	Legal Realm	Political Realm
Orientation	Rights	Development
Approach	Inputs	Outcomes - measurable
Significance	Binding	Non-binding
Key actor/s	Government	Government, donors, civil society, corporate bodies
Nature of provisions	Indivisibility and Interdependence	Fragmented
Implementation at the domestic level	Domestic application through legislation in dualist system like India	Plans and Programmes
Instruments	UDHR, ICESCR, UNCRC, CEDAW, UNCRPD	EFA, MDG

The instruments in the legal realm and the political realm that together constitute the international normative framework on education can be reviewed on four parameters – Goals and objectives, Relationship between the state and non-state actors, Content of education and Learning environment in order to understand the provisions on “quality”. These comprise of:

Article 26 of the Universal Declaration on Human Rights (UDHR)

Article 13 and 14 of International Covenant on Economic, Social and Cultural Rights (ICESCR)

Article 28 and 29 of United Nations Convention on Rights of the Child (UNCRC)

Article 10 of Convention for Elimination of Discrimination against Women (CEDAW)

Article 24 of United Nations Convention on Rights of Persons with Disabilities (UNCRPD)

World Declaration on Education for All and Dakar Framework of Action (EFA)

Millennium Development Goals (MDGs)

Goals and Objectives: The UDHR and the ICESCR recognise universal right to education of all persons and that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They also provide for free and compulsory primary education. The UNCRC provides for free and compulsory education at the primary stage. The UNCRPD aims to ensure an inclusive education system at all levels and lifelong learning directed to: the full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity; the development by persons with disabilities of their personality, talents

and creativity, as well as their mental and physical abilities, to their fullest potential; and enabling persons with disabilities to participate effectively in a free society. The EFA recognises that targets of poverty will be missed and inequalities will widen. Education is recognised as a fundamental human right and a key to sustainable development, peace and stability within and among countries, and thus an indispensable means for effective participation in the societies and economies of the twenty-first century, which are affected by rapid globalization. The MDG goal on education relates to ensuring full access and gender parity in education.

Relation between state and non-state actors: The UDHR and ICESCR recognise the rights of the parents to send their children to schools of their choice, recognise the liberty of private institutions to establish schools as long as they adhere to the minimum standards stipulated by the state. The UNCRC does not recognise the parental rights, but recognises the rights of private educational institutions to exist within the state specified framework. The EFA provides for systematic involvement and co-ordination of all stakeholders while the MDGs aim for a global partnership for development.

Content of Education: The ICESCR states that education shall enable all persons to participate effectively in a free society. The UDHR and ICESCR state that education should promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace. The UNCRC provides that education should be directed towards (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential, (b) The development of respect for human rights and fundamental freedoms, (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own, (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin; and (e) The development of respect for the natural environment. The CEDAW provides for access to the same curricula, same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality. It also provides for elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education, by the revision of textbooks and school programmes and the adaptation of teaching methods, access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning. The UNCRC states that curriculum should be designed on equal basis with reasonable accommodation. The EFA mentions improving all aspects of the quality of education and ensuring excellence of all so that recognized and measurable learning outcomes are achieved by all especially in literacy, numeracy and essential life skills. The

MDGs does not make any references to content of education.

Learning environment: The ICESCR provides that material conditions of teachers should be improved. The UNCRC provides that school discipline is administered in a manner consistent with the child's human dignity and also prescribes facilitating access to scientific and technical knowledge and modern teaching methods. CEDAW encourages co-education and prescribes that education be provided in a non-discriminatory environment. The UNCRPD provides that education should be inclusive, non-discriminatory, and of quality. It prescribed effective individualized support measures in learning environments that maximize academic and social development, and are consistent with the goal of full inclusion. It also recognises the importance of providing trained teachers. The EFA provides for gender equality; safe healthy and equitably resourced learning environments that are conducive for achievements, professionalisation of teachers, and use of Information and Communication Technologies. The MDGs do not make any reference to the learning environment.

Thus, we find that the international normative framework stresses on education as a right but does not get into the question of explaining what “quality” means. Furthermore, the framework talks very little about providing “quality” education and the specific measures that would be required. One also finds that the older conventions such as ICESCR did not even use the phrase such as quality the way newer convention like the UNCRPD does. Even the EFA framework elaborates on the role of various stakeholders in providing quality education.

Potential and Gaps

One of the starting points for this discussion was to understand if the Act provides for quality in education wherein the underlying assumption was that access is guaranteed through this legislation because it operationalises a fundamental right. Thus, the state would become liable if access is not provided. But since the fundamental right itself is silent on “quality”, it is questionable if the Act even attempted to guarantee the same. The argument linking access and quality is particularly strong in the Indian context where evidence shows nearly complete access, yet poor participation and poor quality of education. Thapliyal (2012) explains how even “access” is not satisfactorily provided for under the Act because the economic, social and cultural barriers to education are not fully addressed. While this remains a gap in the legislation on the issue of access, the issue that this paper has tried to address is related to the “quality” gaps in the Act.

Sadgopal (2010) argues that one of the biggest lacunae in the Act is that it does not provide for “education of equitable quality” and by allowing for education of different “qualities” to be offered the social equity goals of the Constitution are flouted by the Act. In a sense, this gap also compromises on the commitment of the National Policy on Education (1992) towards promoting equality, wherein it said, “it will be necessary to

provide for equal opportunity to all not only in

access, but also in the conditions for success” (para 3.6). However, if the Act does not impose a “maximum” ceiling on the “quality” of education offered in private schools, would the prescription of minimum norms on quality sufficiently guarantee equality? In other words, although the Act provides for a minimum level of quality, it is unable to ensure right to access equitable quality of education to all since private schools are not curtailed from responding to “quality” demands from the market.

This brings us to the question about who determines quality, can there be multiple notions of quality and does the Act allow for such multiple notions of quality to co-exist. The answers are not straightforward or unambiguous at this stage given that the implementation of the Act is still in its early days. The Act has the potential to singularly define quality norms on infrastructure, curriculum, pedagogy, assessments and accountability and this authority rests with the central and state governments. Multiple interpretations of quality can prevail so long as they comply with the statutory provisions but the Act does not actively promote or support these variations. As a result, it misses out on an opportunity to capitalise on various innovative interpretations on quality in education and assimilate them into the education system.

One of the practical implications of the enforcement of the norms on school quality is that low-cost budget private schools that fail to comply and meet recognition standards are being asked to shut down. This act of closure of the private schools when the government may not have the capacities to absorb all the out-of-school children into its own schools has been questioned. It is asserted that if such schools are able to provide education of a similar “quality” with less financial outlays, the government should not shut out these more “efficient” options. The corresponding plea is that the government should relax norms on the “inputs” and measure the “outcomes” which should be seen as the markers of quality. The point missed in these arguments is that quality is multidimensional, education is more than measurable learning outcomes and the focus on achievement on tests alone is rather limiting and reductionist. The Act primarily looks at “inputs” with the assumption that it would result in required outcomes. If a statute were to guarantee learning outcomes, who would be liable if those outcomes are not met? In an educational process, the reasons why children may not display desired learning outcomes are complex and relate not only to children's varying abilities but also to the teachers, schools, systemic factors and also the family backgrounds. Who can be held legally liable and what implications would it have on children who are seen as “uneducable” and hence not welcomed by any school? As the paper has noted earlier, there is a need to distinguish between quality of the system (which would be different for an autonomous private school and a bureaucratically controlled government school) and quality as measured by performance at the individual level although there are organic linkages between the two. Delegated legislation such as that formulated by Government of Gujarat provides for measurement of quality standards also on the basis of outcomes and allows for relaxation on infrastructure norms if learning outcomes are met. While the infrastructure norms are

not negotiable as they have been stipulated in the central legislation, the achievements of learning outcome as a criteria for recognition requires further study.

One of the key gaps in the Act (as well as the delegated legislation formulated by the state governments) in terms of quality is the absence of reference to teachers' service conditions. The Act does not prohibit appointment of contractual and low-paid teachers although the National Policy on Education, 1968 had said that of all the factors contributing to quality, the teacher is the most important. This is a major omission of one the critical ingredients or inputs in generation of quality in education and would therefore render the prescribed norms and standards on quality inadequate.

Conclusion

The abovementioned discussion shows that the Act does provide for quality in education and this notion is defined largely from the point of view of “inputs” and can be measured at the level of the system, the school, and the teacher. Among the quality parameters of aims of education, standards of provisioning, pedagogy and learning environment, learning outcomes, accountability and participation and efficiency, the Act provides on all the parameters in varying measures, except learning outcomes, which it leaves out. The international normative framework does not provide much on quality in education although it recognises education as a basic human right. It is important to note that there is no shared consensus on what constitutes quality. While it is too complex to define and legislate upon, it is also too contentious a matter to be left completely outside the political and legal framework. Law making is essentially a political exercise, which involves negotiation of interests and incorporating what is politically acceptable and feasible. The nature of legislation is often incremental and legislation only tries to accommodate social complexities. Given this, the moot question is, would it be plausible to translate the complex idea of quality and legislate it in a manner that creates binding obligations and entitlements beyond what the Act already provides? Besides, quality in education is interdependent on a related set of quality norms and cannot take effect if there is any systemic disconnect, say with quality of teacher educational institutions, or quality of decentralisation. Moreover, legislation is not the only tool for ensuring quality because it cannot operate on its own without adequate state capacities to regulate the compliance and adherence to quality norms by itself may not result in actual quality because quality is largely created through an interactive processes at the level of the system, school, teacher and the student.

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