

Free and Compulsory Education Bill, 2004

The new draft bill on free and compulsory education justifies the parallel system of schooling by juxtaposing the moral urgency of schooling as 'opportunity' versus unbridled toil of the child labourer. The two-tier system of schools contradicts its own high-minded endeavour of having schooling serve as a means to end child labour. Schooling becomes compulsory for fear of drawing penalty, while little attention is paid to ensuring quality education.

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The availability of an impending legislation in the public domain makes the possibility of affecting its contents both real and illusory. It is real to the extent that the website carries a current draft of the Free and Compulsory Education Bill 2004 that has been substantially reworked through a similar process of public reflection and politely invites your comments on the current version of the bill. It is simultaneously illusory because being used to the opaque nature of state-functioning and more recently witnessing the 'participatory' co-option by the neo-liberal state of post-1991 India, my scepticism often gets the better of me. For example, despite the active mobilisation and lobbying efforts of civil social groups in the course of drafting the 86th Amendment, very little of what they proposed actually managed to find its way into the final amendment. However, the glaring gaps, facile assumptions, and disturbing penalising provisions that are contained in the draft Free and Compulsory Education Bill 2004 compels the need for a public discussion of its provisions. The discussion has to exceed the individuation of web-solicited responses and this short piece should be seen as an effort in this direction.

The 93rd Amendment Act 2002 (earlier the 86th Amendment) made free and compulsory education a fundamental right for all children in the 6-14 age group. As a result, the new Article 21A in Part III of the Constitution states that, "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". In compliance with Article 21A the first draft of the legislation was prepared and posted on

the department of education web site (www.education.nic.in) in October 2003, inviting comments from the public. Having incorporated these suggestions to the extent possible a revised version of this draft bill entitled Free and Compulsory Education Bill, 2004, is currently posted on the site. This draft bill has seven chapters, 47 sections and two schedules that are quite comprehensive ranging from the duties of the state and the child's parents, bodies for people's participation, content of elementary education, trial and punishment for offences under the act, etc.

It would be shortsighted to discuss the contents of this draft legislation without a brief discussion of the discursive context that has produced it at this particular historical juncture. One mode would be to trace the trajectory of the draft bill to Jomtien, and the resultant international pressure and civil society efforts at raising the awareness of governments to the rights of the child, the debilitating effects of child labour, etc, and its amelioration through formal schooling. The other mode would be to read this increased emphasis on elementary education as the human face of the neo-liberal state's more debilitating structural adjustment policies and the expanding market's attendant need for a literate and commodity-consuming populace. Irrespective of our mode of interpretation, what is more significant is the heightened morality around children attending school that the past decade has been able to set in place. The child outside of school is seen as one with no future and as excluded from enjoying his/her 'childhood' in the present.

In this article I focus on three different aspects of this draft legislation, namely, school provision, community participation, and the role of teachers. In analysing the

draft legislation the attempt is to gauge the adequacy of its contents given the reality of elementary schooling in India. The idea of free and compulsory education is not a new one in the Indian context. The earliest national attempt was made by Gokhale in March 1910 when as a non-official member representing the Bombay Presidency in the Imperial Legislative Council, he moved a resolution for free and compulsory elementary education in India. This resolution stated that compulsion should be applied only in those areas where 33 per cent of the male population of school-going age were already in school. Despite his gendered caveat, his resolution was rejected and the opposition to it centred on the following: there was no popular demand for it, that no additional taxes could be levied and that there was still some scope for the voluntary extension of primary education through the grants-in-aid system [Sen 1933]. Preceding Gokhale, however, was the compulsory education experiment that began in Baroda in 1893 [Saiyidain et al 1952]. The Bengal Primary Education Act 1919 included provisions for compulsory attendance and several of its provisions are strikingly similar to those that the draft bill contains. Section 8 of this 1919 Bill states that a guardian must send his boy to school or otherwise risk punishment by the district magistrate or by any person authorised by the school committee. Section 10 provides a penalty for failure to obey, while Section 11 states that no person shall employ any boy of 6-10 years of age during school hours (Calcutta Municipal Gazette 1935). In addition to this several post-independence education commissions – including the Kothari Commission, the Acharya Ramamurthi Commission to name a few – have discussed at length the need for, as well as the ways in which elementary education can be made available for all. A national seminar on compulsory primary education was held in 1961 and in the Third Five-Year Plan a nationwide programme for compulsory schooling was launched which failed to meet with much success (Gol 1961). This history is significant not only in terms of precedence, but more so because none of the above quoted examples ever advocated a two-tier system of schooling in order to make real its provisions. Although Gokhale did believe that, "quality of education assumes significance only after illiteracy is liquidated", this sense of urgency did not necessarily translate into an inequitable provision of schools.

The legitimisation of a two-tier schooling system is perhaps the most glaring provision in the draft bill. The bill recognises

two different grades of schools, namely, 'approved schools' and 'transitional schools'. The schedule of the bill clearly delineates the hierarchy within which these two types of schools are being set up. The norms for the approved schools include at least two teachers in primary school, one room per teacher, 200 working days in the academic year, and four hours of teaching per working day in primary schools. In comparison to this the transitional schools get 'instructors' who have passed the 10th grade and have been trained for 30 days. There is no discussion within the transitional schools of the minimum hours of instruction per day, nor minimum number of days per year and nothing at all of the space within which this instruction will take place. To compound this farce of 'norms' is another listing of what is 'desirable' for each type of school. The common sense understanding of desirable, highlights its wishful elasticity and its constitutive ability to accommodate what 'norms' cannot. But even here the legislation reveals its underlying sense of panic in making available, even with this hyper-real 'desirable', equal amenities for both types of schools. As a result even toilet and water facilities while desirable for approved schools do not find any mention in the equivalent list for transitional schools!

'Two-Tier' Structure

The history of the introduction of a parallel system of formal schools in this country can be traced to the EGS schools that were part of the District Primary Education Programme (DPEP) in Madhya Pradesh from 1997 onwards. DPEP was introduced in this country as part of the structural adjustment programme of the World Bank to play the role of a 'social safety net' that would guard against the deep cleavages that SAP had produced in other parts of the world, particularly in Latin America and Africa. Neither did the country's first-time borrowing of international funds for primary education, nor the institutionalisation of this parallel structure of schooling elicit major debates in parliament and/or prompt the government to introduce an independent review into its effects. Instead West Bengal, Uttar Pradesh and Bihar all introduced their own models of EGS schools thus pointing to the large-scale uncritical acceptance of a parallel schooling structure irrespective of political ideology. As Krishna Kumar, Manisha Priyam and Sadhna Saxena astutely highlighted in their article the 'smoke-screen' of DPEP hides, "the roll-back of the state, of contracting commitments for

formal education, of the dismantling of existing structures of formal education, proliferation of 'teach anyhow' strategies, a thrust on publicity management, and a neo-conservative reliance on the community" [Kumar et al 2001:561]. This 'smoke-screen' is also in evidence in the draft bill in its further institutionalisation of this hierarchy of schools with less-qualified teachers and the apparent backing of the community. The perversity of this hierarchy of school provision lies in the fact that the joke is on the majority of first-generation school going children in this country who will in all likelihood attend these transitional schools. Francois Leclercq's (*EPW* 2003) study of EGS schools in Madhya Pradesh highlights that while on the one hand, the physical distance to primary school has been reduced with the introduction of these parallel schools – making it easier for children to enrol – on the other hand, neither the local recruitment of teachers nor community-control of these schools have been able to adequately bridge the class, caste, gender and language divisions that continue to exist.

The reality of government schooling in the country is such that except for rural and to some extent mofussil areas, only the poorest children continue to attend these schools. And even within these families if it can be afforded through any means, either the male child or the more academically promising one, is sent to a local private school. Within this existing hierarchy in which government schools rank the lowest, creating an even lower tier of 'transitional' schools would be to ignore the desirability of poor and often illiterate parents for schooling that would help ensure certain altered and secure futures for their children. The desire for schooling is primarily a desire for certification for both rich and poor parents alike, and for poor parents this is symbolised in a school possessing all of the accoutrements that they believe middle class schools possess. However, the state's neglect of government schools combined with their deliberate oversight of the colossal rise of unregulated private schools in both urban and rural parts of the country, has meant that poor parents often have no option than to enrol their children in these less than desirable private schools, believing that at least these compromised spaces might hold out the promise of 'English-medium instruction', uniforms and regular examinations. Given this existing state of affairs, how then would the state's efforts to create new transitional schools with even lower infrastructural facilities and less-qualified teachers lure in the poor?

The answer lies less in the transitional schools than it does in the sinisterness that underlies the 'compulsory' provisions of the draft bill.

In this draft bill the two-tier schooling structure compels parents to send their children to schools at the risk of being penalised rather than because they desire this particular type of school for their children. The 'compulsory' provisions in the draft bill thus serves to institutionalise a parallel system that poor parents have no recourse to reject. The reason that this idea of 'compulsion' does not provoke more outrage is because the middle class strongly believes, and this is reflected in the draft bill, that the primary reason that children are not in school is because of parental encouragement of child labour. Within this point of view it is quite natural that 'compulsion' takes precedence over quality of schooling issues, quite contrary to the ways in which 'compulsory' schooling provisions have been used in other liberal democracies. Before 1870, the schools in London varied enormously in terms of quality and the availability of spaces in these schools was in very short supply as discussed in testimonies made to the Newcastle Commission on 'popular education' in 1861. The London School Board during its short duration achieved enormous success in enrolling all of London's children in schools through the setting up of five hundred new buildings and as Sidney Webb eulogises,

It is, in the main, to the School Board that London owes the transformation which has, in these thirty-three years, come over its elementary schools – the change from frowsy, dark, and insanitary rooms, practically destitute of apparatus or playgrounds, in which teachers themselves, mostly untrained, mechanically ground a minimum of three R's required by the wooden old code in the heads of their scanty pupils, to the well-lighted and admirably decorated school buildings of the present day, with ample educational equipment, with pianos, school libraries, extensive playgrounds, etc, served by a staff of trained professional teachers [Rubinstein 1977:231].

While it might be easy to dismiss the above example of the London School Board citing our country's financial constraints and populous numbers, the example is important in order to re-emphasise the point that 'compulsory' schooling provisions have in almost all historical instances helped create stronger and more equitable public schooling systems, rather than blatantly legitimise a two-tier structure. Even as an interim measure, validating any explicit

hierarchy in elementary schooling is a risky proposition given the stasis that pervades our educational bureaucracy. The draft legislation does state that efforts will be made within three years (once the bill is approved) to establish approved schools but the caveats to this provision basically reinstate the continued existence of these schools for children in sparsely populated areas and for any other group of children for which enrolment in an approved school is not feasible.

In addition, it is important to keep in mind that these EGS schools were not begun with the idea of them serving as 'transitional' schools, i.e., an interim arrangement, but rather as a new model of schooling that sought to structurally modify the existing idea of a government school. Thus, the self-evident construction of existing government teachers as 'inefficient', and the schools as 'non-functional' has aided in the ease with which this new model has been widely employed in various states of the country. Given this present hegemonic understanding of government schools as having failed, will these 'transitional' schools really remain only an interim three-year arrangement? Or are we in the process of instituting a parallel system that poor parents do not desire but will be forced into pretending to accept because of penal provisions that threaten them if they fail to do so? Should the child's fundamental right to education be legislated through provisions that pay greater heed to financial constraints than to civil-social ethics? And is devoting 6 per cent of GDP, as suggested by the Tapan Bose Committee, a 'financial constraint' or a distortion of priorities when one thinks of the annual increases in military expenditure to an already burgeoning arsenal? And what democratic ethics justify the forced enrolment of marginal children into these compromised school spaces through the coercion of penal sanctions?

As stated earlier, the underlying justification for these penal provisions is the construction of child labour as the self-evident ogre that prevents children from attending school, although the draft bill does not discuss banning child labour *per se*. The way in which this draft bill accommodates both the child working and the child's compulsory attendance in school is through explicitly stating that the child's work should not interfere with the hours that the child is expected to be in school. Any infringement of this provision is dealt with by an entire chapter in this draft bill that discusses, 'Trial and Punishment for Offences Under the Act'. Although the draft bill does recognise the child's right to earn a living, it quite ingeniously manages

to simultaneously read the child's non-attendance as primarily due to child labour and thereby justifies penalising the child's parents and employer for this. Through this sleight of hand, the draft bill manages to restrict the frame of reference (and blame) for a serious and complex social issue like child labour onto parents and employers, thereby making invisible the impact of structural adjustment policies on the life of the poor. Moreover, it skilfully glosses over the fact that research into public schooling in India has proved time and time again that the most pervasive reason why children drop out of school has less to do with child labour and more to do with poor quality schooling which pushes them out of school.

Construction of 'Community'

'Community participation' has emerged as the panacea that appears to rectify all that was previously missing or inadequate in the state's dispensation of welfare. While points of view differ as to the degree of improvement when communities participate and who within the community benefits the most, there is a general consensus that the participation of the community is the *sine qua non* of implementing a programme effectively as well as sustaining it. Within elementary education in India 'community participation' has in the last decade been increasingly viewed as a compelling factor in ensuring continuous attendance, increased girls enrolment, teacher accountability, efficient functioning of a school space, etc. In attempting to analyse the provisions for 'people's participation' in this draft bill my comments focus on the commonsensical ways in which we have come to construct what it means for the community to 'participate'.

The draft bill does incorporate 'people's participation' (chapter III) through several different education authorities that function at various tiers of the hierarchical reporting system that it sets in place. The point to be made with reference to this reporting system (the basic unit is the H(habitation) Elementary Education Authority (EEA), then the L(local)EEA, D(district)EEA, M(Metropolitan)EEA) is that one is not very sure, except for the fact of 'people's participation' at each juncture, how this structure is in any way different from the ponderous pyramid-like educational bureaucracy that is already in place and whose ineffective functioning is legion. Moreover, although issues of representation of marginal communities in these committees has been addressed adequately in the draft legislation, research

has highlighted the inability of dalit and *adivasi* parents to exercise their authority in these committees and *vis a vis* teachers given prevailing levels of discrimination [Balagopalan 2003].

A habitation is the basic unit of planning and implementing programmes and it refers to either a school-based committee or a ward or village education committee as the case may be. Women will make up more than half the membership of the Habitation-level Elementary Education Authority (HEEA) and all other marginal groups will be adequately represented. Among the various tasks being assigned to the HEEA the more significant include drawing up an annual plan with the participation of the community, monitoring the achievement levels of every child enrolled, ensuring that every school within the habitation functions efficiently, etc. A corollary to this increasing dependence on community participation within local planning is the growing dependence on the same community to raise its own funds and the HEEA is expected to mobilise resources from the community for the plans that it designs. This logic is similar to that which currently prompts civil society organisations to loudly proclaim that a nominal amount charged from the poor for services provided is directly proportional to their sustained participation. 'People's participation' is being increasingly understood not in terms of their organic involvement in process to effect local change, but rather in their ability to demonstrate their emotional investment financially. This is not necessarily through capital *per se* but through their labour, their resources, their contributing to the construction of the school building, etc. The neo-liberal state while cutting back on its own welfare provisions produces its 'participant' masses through the apparent independence of locally designed plans as long as local resources are forthcoming.

In addition to the community's financial investment there is the increasing surveillance function that 'people's participation' embodies. The HEEA will monitor attendance through instituting an attendance committee that meets once every fortnight and takes the necessary steps to redress the reason why parents are not sending their children to school as well as take the prescribed corrective action if this persists. This proposed local attendance committee needs to be analysed beyond the exemplary of 'community empowerment' and 'people's participation', its bringing to the fore marginal voices that had earlier been suppressed. Rather a Foucauldian lens that formulates questions of power not so much

in terms of justice as those of technology, tactics and strategy would allow us to be prescient about how the 'community' is increasingly emerging as a new technology of power within which local surveillance can function effectively, economically and without any threat of major resistance. The idea of a community surveilling its own, with the apparent absence of any absolute power, allows for more subtle mechanisms for regulation to emerge as well as generates local, and perhaps unforeseen inventive, innovative ways, of controlling their irregularities. The HEEA not only has the power to take corrective action on offending parents who fail to send their children to school consistently, but through its working at the local level it immerses the 'community' within a field of total visibility and thereby limits the ability of parents to commit offences.

This offence could potentially be parents' unwillingness to send their children to 'transitional schools'. However, in effect members of the HEEA by exercising this surveillance function through the attendance committee on members of their own community mitigates the ability of the community to organise itself against this

unequal provision of schooling. Rather, the virtue of examples – exceptional members of the community that 'people's participation' banks upon – valorises the 'community', while simultaneously vilifying it as well. Members of the community who are seen to be performing their vigilance role adequately, the 'empowered community' ends up legitimising the inequitable provision of schools while the 'community' that does not send their child to this compromised school space is liable to be fined and tried under criminal law.

Defining Teacher's Roles

While the declining standards of government schools in the country has assumed mythic proportions, what is interesting, in this particular historical moment, is the way in which the neo-liberal state has ingeniously distanced itself from this decline through discursively shifting the blame onto tenured teachers. Analogous to discourses on public sector inefficiency and sloth, existing popular opinion is vocal about the pathology of government school teachers and their lack of commitment. These teachers have come to embody the

non-functioning of an entire system thereby making self-evident the need for a new set of disciplinary mechanisms in order to secure the commitment of new teachers. The neo-liberal state's very public efforts to educate all children juxtaposed with this 'talk' of the pathology of tenured teachers morally justifies the state's hiring of less qualified, low paid and untenured teachers/instructors.

However, in this draft bill any reference to these 'instructors' seems to be absent as most of the provisions relating to 'teachers' in the draft bill discusses these with reference to 'approved schools'. This leaves one quite perplexed as to what unspoken conventions will mark the tenure of the 'instructors' in 'transitional' schools given their low remuneration and lack of tenure are concerns to begin with. The provision relating to teachers discusses their 'duties' as well as norms governing their hiring and transfers. Within their duties there is a recognition that teachers will assess learning levels of each child as well as inform parents and guardians about their child's academic progress. In addition, teachers are expected to provide supplementary instruction to 'slow' learners. While the

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sentiment behind this instituting of supplementary instruction is well-taken and could perhaps have an impact on the private tuition epidemic in this country, the draft bill's characterisation of a child who is not able to keep up with the class as a 'slow learner' is problematic when one considers that the majority of children who are enrolled in these approved schools are first-generation learners.

Given the crucial role that teachers play in influencing the child's self-construction as a 'learner' within a classroom space the labelling of the child as 'slow' and as requiring of supplementary instruction will no doubt have a negative impact on the child's self-constructions. Moreover, given that upper caste teachers are the dominant majority in elementary schools – and that existing research highlights their behaviour towards dalit and adivasi students as reflecting larger culturally hegemonic narratives – what counts as 'slow' could in large part translate into upper caste teachers' constructions of the 'educability' of dalit, adivasi and similarly disenfranchised children. Moreover, the existing curriculum's excessive reliance on home-work – something that the draft bill fails to address in chapter 5 which deals with the 'Content and Process of Elementary Education' – when combined with their being first-generation learners will quite naturally lead to dalit and adivasi students being categorised as 'slow'. The point then perhaps is not just 'supplementary instruction' but rather a radical re-think of the pedagogic foundations of the formal education system in India which continues to be governed by certain upper caste cultural assumptions (of a literate home-environment) which functions as the norm.

As important local functionaries of the government bureaucracy, particularly in rural areas, teachers have played an important extra-academic role in the post-independence developmental state. Existing educational research widely recognises the burden this extra-academic workplaces on classroom teaching. The draft bill in Section 8 discussing the deployment of teachers for non-educational purposes states that they will not be asked to perform these tasks except, "under the orders of the approved government". Given that the extra-academic work carried out by teachers – like census and election duty, literacy drives, etc – has always been 'under the orders of the approved government' it seems farcical that this provision has been included in the draft bill as if to redress the existing situation! Therefore in effect, the draft bill fails to adequately intervene to alleviate the extra-academic burden of teachers,

except to weakly state that the HEEA should make alternative arrangements.

In chapter 5, which deals with 'Content and Process of Elementary Education', there is ample discussion of how curriculum transaction processes should be interesting, effective, etc, but nowhere is the role of teachers in engendering this articulated, except of course when they are being asked to follow 'guidelines' that are issued by the appropriate government. Teachers form part of an excessively centralised educational bureaucracy in which their role as another government functionary reduces any creative and active engagement they might have in the drafting of curriculum, evaluating students performance, etc. The draft bill's failure to lay down norms with respect to any aspect of teacher independence in curricular transactions and its attendant functions, and instead specifying the 'duties', 'deployment', 'recruitment' and 'transfer' of teachers continues to construct teachers as the minions of the elementary education edifice. The draft bill's desire for classroom transaction processes to be effective and meaningful, is complicated by the deep distrust that appears to frame its underlying worldview of government teachers. It is only by adequately addressing this fundamental contradiction – instead of setting up a parallel underpaid, untenured teaching cadre as the solution – that we can expect to have government schools whose quality, energy and creativity match those of the better alternate schools in the country.

Conclusion

In taking the liberty to focus on a couple of provisions in the draft bill this article has omitted discussions on a large number of other pertinent issues. For example, section 14(9) states that a child receiving instruction in a school that is not recognised shall not have the right to be admitted into a recognised school. Given the state-sanctioned (the absence of any policy to regulate this amounts to a 'sanction') proliferation of private unregulated schools as well as the dominant construction of private schooling as superior, it is likely that poor parents might continue to enrol their children inadvertently in a school that is not recognised. In penalising the child for this by denying him/her admission in a higher or equivalent grade the more arduous and complex problem of unregulated schools is skilfully circumvented. Another stark absence in the draft bill is its lack of provisions for the enrolment of children of migrant/seasonal workers. Their requiring to be enrolled in more than one

school during the academic year and the attendant complications in taking exams, etc, provides an added intricacy to the 'compulsory' clause that this draft bill fails to address.

The Common Minimum Programme of the new government does speak of seriously addressing issues related to universalising elementary education. The right to education remained a directive principle for as long as it did because successive governments made the argument that the country lacked adequate economic resources to bring about its successful implementation. But now this new draft bill by allowing for a parallel system of schooling is essentially making the same argument but this time justifying it through the moral urgency of schooling as 'opportunity' versus unbridled toil of the child labourer. While the liberal compulsions that frame this binary are debatable, the article has tried to highlight that the two-tier system of schools that this urgency institutionalises fundamentally contradicts its own self-confessed endeavour of having schooling serve as a means to end child labour. This can only begin to happen when the future of public schooling in India is imagined within the vectors of a more equitable and persuasive 'common school' system, rather than within the reductive expediency of penal provisions and 'transitional schools'. ■■■

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