Model Rules for the Right to Education Act

ARCHANA MEHENDALE

The notification of the Right of Children to Free and Compulsory Education Act, 2009 depends on how soon an acceptable formula for sharing the financial burden between the centre and states is worked out and the model rules are drafted. The committee formulating the model rules could learn from states with well developed codes, legislation and rules on school education and should consider incorporating effective provisions into the central model rules. These can thus become the means to facilitate policy transfers across states.

Archana Mehendale (*arch_mehendale@yahoo.com*) was a member of the CABE Committee on the Right to Education Bill (2005) and is visiting faculty, the Tata Institute of Social Sciences, Mumbai.

The Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as the act) received presidential assent on 26 August 2009. It would come into force on such date as the central government may notify. The notification of this act (and also the 86th amendment of the Constitution) which makes children's right to education enforceable depends on at least two important factors. First, unless an acceptable formula for sharing the financial burden between the centre and states is worked out, the central government is likely to drag its feet. Although the bill was passed by Parliament without an accompanying financial memorandum, the outlays are likely to be an additional Rs 3,21,000 crore to Rs 4,26,000 crore over six years as estimated by the Central Advisory Board of Education (CABE) Committee (2005). Several states have already conveyed their inability to bear this expenditure on their own. Second, the ministry of Human Resource Development has constituted a committee to draft "model rules" that will guide the operationalisation of the act. It is likely to be notified once these rules are formulated.

However, preparation of the model rules centrally is not an easy exercise given the large interstate disparities and diversity of education legislation across states. Even though education is on the concurrent list, the provision, funding and regulation of education is primarily the responsibility of state governments. This article focuses on rule-making under the act and examines the role of centrally formulated rules within the federal structure on elementary education. It also identifies some of the substantive provisions that could be considered by the committee responsible for formulating model rules under the act.

Dynamic Federal Relations

The process of making rules or delegated legislation under the central act should be seen in the context of dynamic federal relations in elementary education. When the Parliamentary Standing Committee on Human Resources Development discussed this matter in the light of the constitutional amendment on the right to education in its 63rd report (1997), it took the position that the central legislation should be "skeletal" and that the state governments should be left free to formulate their own delegated legislation. However, the act is hardly skeletal and the autonomy of the state governments to formulate legislation is not entirely preserved since it stipulates provisions on matters that come under the jurisdiction of state governments. For instance, as the 213th report of the Parliamentary Standing Committee (2009)

observed, the clause curbing vacancies of teachers up to 10% in the central act could conflict with state government strategy on the recruitment of teachers and filling up of vacancies. This must be seen in the context of the changing nature of centre-state relationship in education since the 1990s.

On the one hand, the role of the central government and its contribution to Plan allocations has significantly expanded since the launching of centrally sponsored schemes like the Sarva Shiksha Abhiyan and Mid Day Meals. The poor fiscal position of the states has meant greater dependence on these central grants even for meeting the basic requirements of maintaining the education system. This has made state governments generally open and responsive to policy initiatives that are driven by the central government. On the other hand, state governments (and earlier provincial governments) have built their education systems and made policy choices based on their political, social, cultural and economic interests and constraints. Issues such as language, structure of the education system, the curriculum, grant-in aid for private schools, recruitment of teachers, and the use of technology have been dealt with differently by state governments even though they have loosely adhered to the National Policy on Education, 1986 and revised formulations of 1992. The nature of the interstate differences as well as centre-state differences was apparent from the comments sent by the state governments on the draft prior to the adoption of the central act. State governments indicated their deep reservations and even resistance towards accepting centrally prescribed norms in matters where state policies and legislative norms existed. Given this background, the process of preparing the model rules would need to seek a delicate balance between ensuring adherence to the spirit and provisions of the act by all state governments and respecting their authority to stipulate rules that would facilitate the enforcement of the act in the most effective way.

The formulation and adoption of model rules by the central government would present the following options before the state governments: (a) state governments may adopt the model rules *in* toto, (b) state governments may amend their existing legislation and rules in light of the act and model rules. In some states, especially all the southern states, Delhi, Goa and Punjab, well formulated legislation and rules exist on matters that would be covered by the model rules. In fact, some of them are far more detailed and comprehensive than the scope laid out for model rules. The committee formulating the model rules could learn from states with well developed codes, legislation and rules on school education and consider incorporating effective provisions from states into the central model rules. The central model rules can thus become the means to facilitate policy transfers across states.

Substantive Provisions

The main purpose of the model rules is to prescribe detailed provisions through which the act can be operationalised and enforced. Some of the substantive provisions that could get defined under the model rules are discussed below.

Disadvantaged Groups: As per the act, it is the duty of the appropriate government and local authority to ensure that children belonging to disadvantaged groups and weaker sections are not discriminated against and prevented from pursuing and completing elementary education. Private unaided schools and schools belonging to "specified category" (defined as Kendriya Vidyalaya, Sainik Schools and Navodaya Vidyalaya) are required to admit at least 25% of the total strength of children belonging to these categories from the neighbourhood starting from class 1 or pre-school. The act defines "disadvantaged" but provides scope for further additions to the definitions under rules. The model rules should utilise this and prescribe groups that have been completely excluded from the existing definition despite their disadvantage. Children with disabilities, children from internally displaced communities and migrant families and children coming under the juvenile justice system need to be specifically included in the model rules so as to protect their right to non-discriminatory treatment and their right to receive education in mainstream schools.

Definition of Neighbourhood: The act states that the appropriate government and local authority shall establish *a school* within the neighbourhood, where it has not been established, within a period of three years. The area or limits of neighbourhood would be prescribed by the rules. Existing policies and state legislation define neighbourhood in geographical terms, either as a habitation or distance within a radius of one kilometre for primary school and three kilometres for upper primary school. Rule-making in this regard may have to take into consideration the

following issues. First, should the definition of neighbourhood be based on geographical limits or population norms (as in case of primary health centres and anganwadis) or both? Geographical limits that do not take into account the physical terrain, topography and availability of public transport system become meaningless. In densely populated urban areas, establishment of only one school within a kilometre may be inadequate if the infrastructure cannot cater to the child population within the geographical limits. In such cases, prescribing the number of schools that must be established per given number of child population would be an appropriate norm. But since such a population norm would be unrealistic in sparsely populated tribal and rural areas, a combination of both the geographical and population norms should be considered while making rules on "neighbourhood". Second, the rules would have to depart from the existing practice of setting up differential norms for establishing primary and upper primary schools since the act stipulates the duty of the government to ensure admission, attendance and completion of elementary education (class 1 to 8) by every child.

Thus, the model rules should ensure that schools with class 1 to 8 are established for all children within every neighbourhood. This should be irrespective of the differences that currently exist in defining elementary education (Class 1-7 or Class 1-8) among different states and differences in existing norms about neighbourhood for primary and upper primary schools. Third, the committee could consider having a separate definition of "neighbourhood" with regard to the provision of 25% quota in private unaided and specified category schools for children belonging to disadvantaged and weaker groups from the neighbourhood. Generally, elite schools are located in elite neighbourhoods where there may be few children belonging to these categories residing in the school's vicinity. Such schools may not admit disadvantaged children since there may not be any or not enough to fill the prescribed 25% limit in that neighbourhood, whereas smaller private unaided schools located in underprivileged areas would have excess demand. If the model rules can define neighbourhood with regard to this particular provision in a wider sense (or even as zones, with children from the immediate neighbourhood getting first priority and then those from the extended neighbourhood until the quota is filled up), more students would be able to access the 25% quota.

Teachers: One of the most serious lacuna of the act is that it does not have a definition of a teacher. A review of legislation from different states indicates that it is the same with some states (such as Kerala, Punjab) although teachers are the key agents within the school system. A teacher is someone with professional education (as seen in Goa, Daman and Diu School Education Rules, 1986 that define a trained teacher as "teacher who has secured a professional diploma or a degree in teaching as prescribed by the government and recognised by the department which qualifies him for a teaching post in a school"). Or it is anybody who is appointed to teach (as seen in the Madhya Pradesh Jan Shiksha Adhiniyam (2002) that defines a teacher as "any member of the teaching staff of a school, known by any name approved by the government and duly appointed to teach in that school"). If the model rules do not define a teacher, states may appoint unqualified persons for teaching functions and not call them teachers, thereby keeping them outside the purview of duties and obligations stipulated for teachers under the act. The existing practice of ad hoc appointments and nomenclatures such as *shiksha karmi, shiksha mitra* and *vidya* volunteers may then continue defeating the purpose and spirit of the right. Given the wide interstate disparities in appointment of teachers, the model rules should uphold the National Council for Teacher Education (Determination of Minimum Qualifications for Recruitment of Teachers in Schools) (Amendment) Regulations, 2003, that lay down minimum qualifications for recruitment of teachers in all formal schools established, run, aided or recognised by the governments.

Furthermore, the model rules should circumscribe the powers given to the central government to notify a relaxed minimum qualification for appointment of teachers wherever there are inadequate teacher training institutions or where qualified teachers are not available in sufficient numbers within the abovementioned regulations. Any dilution of minimum qualifications of teachers will lead to delivery of poor quality education. While prescribing additional duties of teachers under the model rules, the committee should note the exhaustive duties and strict codes of conduct that already exist in state legislation and therefore refrain from overburdening the teacher.

Recognition of Schools: The schedule under the act prescribes norms and standards that must be fulfilled by schools seeking recognition (recognition itself has been made mandatory for all private schools). Prescribing norms and standards for recognition of schools has been the mandate of the state governments but as per the act, the central government has been given the power to amend the schedule. Given this, the model rules should take on board the existing norms and standards that state governments have prescribed and insist that higher standards be adopted in the interests of ensuring higher quality of education. For instance, most of the states insist that schools seeking recognition must hire teachers with minimum qualifications. They also have infrastructural norms such as size and ownership of land belonging to the school, physical space available per child, fire certification of schools and laboratories. But these are completely absent from the schedule.

In some cases, the state governments have already laid higher standards than what is prescribed in the schedule. For instance, Delhi Education Rules (1973) state that every teacher should devote 1,200 hours of teaching of which at least 200 hours should be for providing extra coaching to weak and gifted children whereas, the schedule prescribes only 800 hours for classes 1-5 and 1,000 hours for classes 6-8. In other cases, the central schedule lays higher standards than what is currently followed in states. For instance, the schedule stipulates a pupil-teacher ratio of 30:1 while several states prescribe 40:1 under their rules. Besides, some states such as Delhi, Karnataka, and Orissa do not grant recognition to schools if there are adequate schools existing in a given area, or if the government considers that setting up a school is not in the "public interest"

or if the establishment of a new school causes unhealthy competition. Since the schedule and the act do not prescribe any such criteria for purposes of recognition, the rules could direct state governments to examine such restrictive provisions.

School Management Committee: Under the Sarva Shiksha Abhiyan, states have prescribed establishment of either community bodies (like village education committees) or user groups (parent-teacher associations in Madhya Pradesh or school development and monitoring committees in Karnataka) for implementing and monitoring programmes for universalising elementary education. In Madhya Pradesh and Karnataka, they have been created under statutes or bye-laws and enjoy a greater role than that prescribed under the act. The model rules should draw from these existing models and, based on the evidence of their functioning, prescribe additional functions that can be performed by the school management committees. Certain inadequacies of the act itself, such as exclusion of children from the committees, or lack of clarity in terms of the status of the committees vis-à-vis panchayati raj institutions, can be overcome by making substantive rules in this regard. For instance, the rules related to procedure for developing school development plans could build in participation of children and make it mandatory for the plans to be presented and discussed before the gram sabha or the panchayat standing committees on education.

Apart from these substantive provisions, wider debate is necessary on procedures for reimbursing private schools that provide free education to disadvantaged students and on independent mechanisms for monitoring the act. The process of legislating on right to education is far from over. Civil society organisations and teachers' unions must continue to engage with the rule-making process, especially at the state level and ensure that their state governments formulate provisions that effectively realise the goals of the act.