

# Right to Education and Inclusion in Private Unaided Schools

## An Exploratory Study in Bengaluru and Delhi

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Section 12(1)(c) of the Right of Children to Free and Compulsory Education Act, 2009 provides for inclusion of children from disadvantaged and weaker sections in private unaided schools. Although meant to foster inclusion and achieve social justice objectives, this legal provision has been highly contested and its implications for the expanding private sector in school education are not fully understood. This article is based on an exploratory study, conducted in Bengaluru and Delhi, which examines the status of implementation of this provision with a view to delineate key issues at the level of state administration, schools and parents. Using qualitative data collected from the two sites, the study compares and comments on the extent to which the provision has been able to deliver on its purported goal of inclusion. It concludes by identifying gaps and challenges that require an urgent policy response.

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Section 12(1)(c) of the Right of Children to Free and Compulsory Education Act, 2009 (henceforth RTE Act) provides for inclusion of children from disadvantaged and weaker sections in private unaided schools by requiring them to reserve 25% of their seats for such children at Grade 1 or pre-primary level. Children admitted under the RTE Act in such schools are entitled to receive free education, with the government offering to reimburse schools an amount equivalent to the government's own annual per-child expenditure. The manner in which such admissions should occur and the nature of such inclusion has been determined by the rules framed by state governments.

This provision<sup>1</sup> is a significant legal and social attempt to foster inclusion and tries to address wide disparities prevalent within the education system. It is unique because it places a legal duty on the private schools to fulfil children's right to education in a manner that is decided by the government. This has direct implications at multiple levels. At the administrative level, these implications relate to the way in which rules have operationalised the statutory provision and the extent to which the mandated regulatory structures enable its implementation. At the school level, the issues are regarding admissions, fee reimbursements and financial adjustments, school and teacher preparedness, sociocultural dynamics within school and classrooms, peer interactions, and academic planning. At the family level, the implications revolve around coping and adjustments pertaining to sociocultural differences, economic constraints and ability to provide educational support.

This article is based on an exploratory study<sup>2</sup> that was undertaken in a context where there has been surprisingly little attention given by researchers to the RTE Act in general and the 25% provision in particular. Even now, there is no official comprehensive report on either the status of implementation or emerging issues, and the only academic research that is available is an exploratory study by Sarin and Gupta (2013) of the perceptions of principals, parents and children on the "RTE quota" with a very small number of respondents in Delhi.

### History of the Provision and Recent Contestation

Policy prescription on inclusion of marginalised children in private schools has a long history and can be traced back to the National Policy on Education (1968) which recommended that special schools like "public schools"<sup>3</sup> provide a prescribed

proportion of free studentships to prevent segregation on the basis of social classes. However, such a policy intent remained only on paper and access to schools continued to be stratified based on the socio-economic status of children. Private schools remained exclusive until a landmark decision which re-established their social mandate. In *Social Jurist vs Government of National Capital Territory of Delhi & Ors* (cw No 3156 of 2002), the Delhi High Court ordered the Delhi government to ensure that private schools provide 25% reservation to children belonging to economically weaker sections in lieu of the land concessions received by the schools from the government. The articulation of Section 12(1)(c) of the RTE Act provides for a similar measure to be extended to all private unaided non-minority schools, irrespective of whether schools receive any such concessions from the government.

Private unaided schools that had hitherto enjoyed an unrestricted right to grant admissions challenged the constitutionality of the RTE Act as well as the validity of Section 12(1)(c) soon after the RTE Act came into force in April 2010. In *Society for Unaided Private Schools of Rajasthan vs Union of India*,<sup>4</sup> the majority view of the three-member bench of the Supreme Court, while disposing a bunch of petitions was that the RTE Act is constitutionally valid and it would apply to all government schools, aided schools (including minority aided), specified category schools and unaided non-minority schools. It would not apply to unaided minority schools because the act, and in particular Sections 12(1)(c) and 18(3),<sup>5</sup> was held to infringe the fundamental freedom guaranteed to unaided minority schools under Article 30(1)<sup>6</sup> of the Constitution. The judgment specifically clarified that the 25% provision would be applicable for admissions given for academic year 2012–13. This matter was then referred to a constitution bench of the Supreme Court to look into the validity of Article 15(5) and Article 21A of the Constitution. Article 15(5), which was introduced through the Constitution (93rd) Amendment Act, 2006, enables the state to make a special provision, by law, for the advancement of socially and educationally backward groups of citizens or for the Scheduled Castes (scs) and Scheduled Tribes (stS) insofar as such special provisions relate to their admission to private aided and unaided educational institutions. This does not apply to the minority educational institutions referred to in Article 30(1) of the Constitution. Article 21A introduced by the Constitution (86th) Amendment Act, 2002 prescribes that the state shall provide free and compulsory education to all children between the ages of 6 and 14 years, as per the law determined by the state. The Supreme Court held that if the RTE Act is made applicable to minority schools, aided or unaided, the right of the minorities under Article 30(1) of the Constitution will be abrogated. Thus, the RTE Act shall not apply to minority schools.<sup>7</sup>

This study was undertaken after the Supreme Court orders in April 2012 and yet most private schools were not willing to reopen the admissions claiming to have completed the process. So, only those schools that had started implementing the provision for the academic year 2012–13 became the focus of our study. Before moving into the details of the study, in the

next section we briefly dwell upon the changing terrain of school education in recent decades, which is a phenomenon that must be taken into account when considering the implications of the 25% provision for private schools.

### Expansion of Private Schooling and Role of RTE

The role of the private sector in education has increased steadily over the past two decades. The Annual Status of Education Report (ASER) indicates that around 35% of the primary school-children in India were enrolled in private schools in 2012 and by 2014 this figure would be 41% and by 2019 the government school system would be relegated to secondary status in providing primary education (ASER 2012). Though there is variation across states in private school enrolment at the primary level, there are also interesting patterns (Table 1). Much of

**Table 1: Percentage Enrolment in Private Schools (Standard I–V) 2010**  
(based on DISE 2010–11)

Percentage*	States	Number of States
60% or more	Goa, Kerala, Puducherry	3
50% to 59%	Manipur, Nagaland, Tamil Nadu	3
40% to 49%	Andhra Pradesh, Jammu & Kashmir, Karnataka, Maharashtra, Meghalaya, Punjab, Uttarakhand	7
30% to 39%	Delhi, Haryana, Himachal Pradesh, Mizoram, Rajasthan, Uttar Pradesh	6
20% to 29%	Assam, Chandigarh, Gujarat, Madhya Pradesh	4
10% to 19%	Arunachal Pradesh, Chhattisgarh, Jharkhand, Odisha, Sikkim	5
Below 10%	Bihar, Tripura, West Bengal	3

\*Corrected to integer figure. From ASER (2012: 5).

eastern India is on the relatively lower end of the spectrum when it comes to private school enrolment, compared to states in other regions. There is a predominance of states from southern India in the higher end, while states from west and central India fall in the middle or lower range of enrolments in private schools. The North East provides some contrasts with Manipur, Nagaland, Meghalaya and Mizoram falling in the higher and middle ranges but Tripura falling much lower.

These figures mask the presence of a burgeoning private unregulated sector with an already sizeable presence. “Budget schools” or unregulated private schools have played a significant role in the overall transition from the public to private system in recent decades (Nambissan 2012). District Information System for Education (DISE) 2011–12 indicates the presence of around 26,000 unrecognised schools across India with enrolments of around 28.4 lakh children.<sup>8</sup>

Karnataka, with Bengaluru as one of the two sites for this study, also shows an increase in private school enrolments. As per an education department report that has assessed trends from 2006–07 to 2012–13, there is a significant decrease in students, almost 12.5 lakh, in government elementary schools coinciding with increased private school enrolment. In effect, there is an overall shift of over 13.14% in six years from government schools, at an average rate of 2.19% per year (Government of Karnataka 2013: 52). In urban areas, the presence of private unaided schools is the highest (48.9%) followed by government schools (36.7%) and aided schools (12.3%). In rural areas, however, government schools continue to dominate (85%)

followed by private unaided schools (11.2%) and aided schools (2.5%). Private unaided schools have increased at both the lower primary and higher primary stages (percentage increases of around 7.5% and 51%, respectively).<sup>9</sup>

Delhi, the other site for this study, like most states surrounding it, exhibits a high incidence of private schools, particularly those imparting elementary education. In 2007–08, the proportionate distribution of schools was 63:37 between the government and private schools which became 55:45 in 2011–12. In terms of proportionate distribution by enrolment, Delhi is marginally better than Karnataka at both lower primary and higher primary levels, but the trends are unmistakable as in Karnataka. There was almost an 8% decrease in enrolments in government schools at the primary level from 2007–08 to 2011–12. Tables 2 and 3 provide a sense of the increasing presence of the private sector in elementary education in both Karnataka and Delhi.

**Table 2: Schools Imparting Elementary Education in Karnataka by Management Type (2007–08 to 2011–12)**

Karnataka	Number of Recognised Schools Imparting Elementary Education	No of Government Schools	No of Recognised Private Schools	Per Cent Government Schools	Per Cent Private Schools
2011-12	70,896	50,885	19,966	71.77	28.16
2010-11	59,484	46,550	12,903	78.26	21.69
2009-10	58,159	46,325	11,834	79.47	20.38
2008-09	57,517	46,199	11,318	80.32	19.68
2007-08	56,441	45,622	10,819	80.83	19.17

Source: DISE data.

**Table 3: Schools Imparting Elementary Education in Delhi by Management Type (2007–08 to 2011–12)**

Delhi	Number of Recognised Schools Imparting Elementary Education	No of Government Schools	No of Recognised Private Schools	Per Cent Government Schools	Per Cent Private Schools
2011-12	5,064	2,782	2,282	54.94	45.06
2010-11	5,021	2,772	2,249	55.21	44.79
2009-10	4,946	2,733	2,213	54.78	44.36
2008-09	4,930	2,768	2,162	56.15	43.85
2007-08	4,742	2,982	1,760	62.88	37.12

Source: DISE data.

Thus, it is clear that the percentage of private schools in both Karnataka and Delhi has risen over the past five years. These private schools, barring those established by minorities, come under the ambit of Section 12(1)(c) of the RTE Act and are mandated to provide admission up to 25% of their seats to children from marginalised backgrounds. The RTE Act has opened a new chapter in the “state-private” equation and this must be seen in the context of an expansion of the range of private providers across the country, a definite shift of students from government schools to private schools, and a rapid proliferation of private schools. The imposition of specific statutory duties on private schools under the RTE Act has also raked up policy arguments about the efficiency of such schools compared to the purportedly dysfunctional government system and their importance in realising the goals of the RTE Act (Jain and Dholakia 2009). Such arguments have been examined from the point of view of their feasibility and appropriateness by Ramachandran (2009), Jain and Saxena (2010)

and Sarangapani (2009). While this paper does not dwell on those arguments, it attempts to understand how private schools cope with and negotiate the demands of the RTE Act, and specifically their obligation to foster inclusion.

## Methodology

The broad research objectives of the study were to: (a) review the rules, guidelines, notifications of the appropriate governments related to the 25% provision and to assess the extent to which it has been operationalised through administrative measures; (b) examine the administrative structures and processes for the implementation of the provision and its functioning and to assess the preparedness of the government to implement the said provision; and (c) assess the nature of inclusion under this provision in select private unaided schools. Specific research questions were shaped around these broader research objectives. These were: (i) What is the level of adequacy, clarity and accessibility of the norms laid out by the government for enabling the implementation of the said provision? (ii) How has the administrative machinery mediated this statutory obligation into practice? and (iii) What has been the experience of key stakeholders in facilitating inclusion in schools?

Bengaluru and Delhi were selected for the study because they were the front runners in the implementation of this provision under the RTE Act. Delhi had the experience of implementing 25% reservations for children from economically weaker sections pursuant to the Delhi High Court direction mentioned earlier and this provided an additional dimension to the study. Karnataka had proactively started putting in place systems for the implementation of this provision, although the state rules under the RTE Act were notified only after the Supreme Court decision of April 2012.

In Bengaluru, the study covered 36 private unaided schools across the two education districts — Bengaluru south and Bengaluru north — that comprise Bengaluru urban.<sup>10</sup> Block-wise list of schools that had implemented the provision in 2012–13 was collected from the education department. Preliminary inquiries with the schools revealed that several of these schools had not implemented the provision because they had not received any application. Schools were selected purposively, from among the schools that had implemented the provision, to get a spread across categories based on socio-economic profile of students, the school board they were affiliated to, and location. In Delhi, although the intention was to study 25 schools, several schools did not respond or cooperate and thus only 16 schools were studied. A block-wise list of the schools was obtained and the final sample of schools was chosen from four districts — south, north east, central and New Delhi — out of the 11 districts in Delhi. These districts were chosen based on the geographical spread, socio-economic profile of the district, and socio-economic profile of the schoolgoing students in the district.

The research incorporated multiple methods — a short survey of the private unaided schools; semi-structured interviews with school principals, teachers, and parents; semi-structured interviews with key informant — such as senior government functionaries, members of private school associations, members

of institutions mandated to oversee the implementation of the RTE Act, and members of civil society organisations engaged with the provision. A set of 10 tools for data collection was prepared and finalised during the two workshops (one in each city) with the data collection team and partnering institutions. The study involved an analysis of secondary data sources, rules and notifications on the 25% provision as was publicly available or made available by the respective state governments. The research team also attended meetings and public hearings conducted by the government and civil society organisations on this subject in order to collate additional data and gain insights into the ground realities.

School visits were made only after seeking prior written permission from the government and after making appointments with the schools. Given the fact that Section 12(1)(c) has been a contentious provision and still a subject of litigation in the courts, accessing private schools for collection of data was not easy. The lists of schools provided by the governments in both the sites were not fully reliable because several schools on the list admitted to not actually having commenced implementing the provision.

For data analysis, the structured and close-ended questions from the data collection tools were entered into spreadsheets. Responses to open-ended questions were entered and themes from these responses were identified during the analysis. Narrative reports based on observations during the school visits and interviews with respondents were also digitised and then analysed to identify thematic issues that were substantiated and triangulated with data from other sources. As the number of observations and quantum of data was relatively small and qualitative in nature, descriptive accounts were generated using the same. The data entry and analyses was first done separately for both the cities, and thereafter, comparative observations were drawn to comment on the wider policy implications.

### Analysis of Rules and Guidelines

Section 38 of the RTE Act delegates the rule-making powers in relation to specific provisions (including Section 12) to the state government. The state rules thereby prescribe the manner in which Section 12 would be operationalised, including the procedures and amounts of reimbursement to private schools. In addition to the rules, the governments of Karnataka and Delhi have also issued notifications on specific matters related to the implementation of the said provisions.

The rules prescribe the process of admissions and these are similar in both the states. Schools are required to display the number of free seats available, admissions and wait lists on their notice boards. No registration fee or prospectus can be charged from those applying for free seats. A common application form must be available free of cost on the website and the same can be used by parents. If there are more applications than the available seats, selections are to be done through lottery method in the presence of parents, and an official from the education department. The lottery process is videographed and recordings along with list of selected candidates are to be sent to the department within a day of the lottery. In Karnataka, if sufficient seats are not filled in by children from the sc list (7.5%), they are filled in by children from the sr list (1.5%) and vice versa. If both these lists are not filled, they are filled by all other categories of disadvantaged and weaker sections (16%). If seats for all other categories are not filled, they have to be filled in with children from the sc and sr lists. In Delhi, schools are supposed to display on the notice board the list of selected children for free seats and general seats in alphabetical order but marking “G” against names of general category students. In case there are vacant seats, these are to be re-notified for admissions.

While the notifications provide for a minimalist framework required to initiate the process of implementation, they remain inadequate on various grounds in both the states.

First, the classification of children into a close-ended list of disadvantaged categories does not address the empirical question of children having multiple disadvantages. It is unclear if children suffering from more than one “disadvantage” would get priority or even separate treatment during lotteries conducted for admissions.

Second, both the state rules limit the classification of “disadvantaged” to a subset of categories from a longer open-ended list provided under Section 2(d) of the parent act. For instance, disadvantages owing to language and gender, both of which are mentioned in the act, have not been notified as “disadvantages” under either of the state rules. Given this variance in state-level definitions of who is “disadvantaged” (Delhi does not include children infected/affected by HIV and Karnataka does not include children with disabilities), it is worth questioning the grounds on which these decisions to exclude or include certain categories from the larger pool that is prescribed under the act are made, and consequently, if such significant omissions call for

**Table 4: A Review of State Rules and Additional Notifications Issued in Karnataka and Delhi**

Provision	Karnataka	Delhi
Definition of “disadvantaged” and “weaker section” categories	“Disadvantaged” category – children from SC, ST or Backward Class, orphan, migrant and street child, child with special needs and HIV affected/infected child. “Weaker section” is defined as children belonging to all other castes and communities whose annual income is less than Rs 3.50 lakh but preference to those with income less than Rs 1 lakh per annum.	“Disadvantaged” category – children belonging to SC, ST and Other Backward Classes (OBC) not falling in the creamy layer, and children with special needs and disabilities. “Weaker section” is defined as children whose parental income is less than Rs 1 lakh per annum from all sources. The residency clause of three years in Delhi has been removed since October 2013.
Entitlements of children	Free textbooks, writing material and uniforms; free special learning and support material for children with disabilities	Free textbooks, writing material and uniforms; free special learning and support materials for children with disabilities
Financial reimbursement	Rs 11,848 per annum for Grade 1 and Rs 5,924 per annum for pre-school admission	Rs 11,900 per annum for Grade 1

central norms to prevail over diluted state definitions of the disadvantaged.

Third, while the requirement of certification of eligibility under the provision is a non-negotiable for admission, it overlooks the realities of certain categories such as street and migrant children that may have difficulties in accessing and negotiating bureaucratic machinery for getting the required certification.

Fourth, the requirement of sending children to a neighbourhood school has been relaxed by the Ministry of Human Resource Development in guidelines issued on the subject, yet the neighbourhood and distance norms are stringently followed for admissions for 25% quota. Often schools, especially in cities like Bengaluru and Delhi, are not necessarily located within a residential neighbourhood, and hence the probability of children residing within the rigid distance norms of neighbourhood accessing the provision is low in such schools. While Delhi has provisions for filling vacancies through more than one round of admissions, Bengaluru does not provide for the same and vacancies remained unfilled in such schools.

Fifth, quota within quotas in RTE admissions has been held illegal and contrary to the provisions of the act by the Delhi High Court in 2012. Yet, the Karnataka Rules provide for quotas within quota.

Sixth, while our Delhi data did not reveal the per-child expenditure rate for reimbursement of admissions in preschool, the rate fixed for Bengaluru was arbitrary by the government's own admission as it was derived by simply halving the per child expenditure amount for Grade 1.

Seventh, the compliance report format in Bengaluru was found to be inherently problematic. It includes a dimension of children's academic grading and presupposes that children from disadvantaged and economically weaker sections are likely to perform poorly and hence require special training. Although detention is prohibited under the RTE Act, the format inquires about detained children and also suggests conditions (such as attendance, performance and disciplinary grounds) that would otherwise justify detention. The formats also inquire into the "schooling habits" of children admitted under this provision. While reports about children are invited from schools, there is no opportunity for parents to give feedback about the school's performance on inclusion as part of the compliance report. Given that reporting is one of the main tools of ensuring accountability (other than financial reports and audits), an inadequate reporting system requires serious reconsideration and revision.

Eighth, in Delhi, the requirement of displaying names of children on the school notice board specifically marking their status as admitted under the RTE quota may help ensure transparency but it tends to border on labelling of children and lays ground for their discrimination.

Ninth, although both governments have posted their notifications on their respective websites along with lists of neighbourhood schools and seats available, these remain inaccessible because of language (use of legalese, lack of bilingual material) and presentation issues. In other words, the websites

are not very helpful in guiding eligible families about seeking admission in a neighbourhood private unaided school.

### Main Findings

The study shows that the experience of implementing the RTE provision of 25% has been similar on some parameters across the two cities, yet distinctly dissimilar in other respects. Given that there is a growing trend of privatisation in both the cities, it would be useful to understand the implication of this provision on the private schools and on the beneficiaries (children and families). This section presents key comparative findings emerging from Bengaluru and Delhi.

### Administrative Structure and Processes

(1) The education departments in both cities face severe shortage of staff. Although the mandated tasks of the department have significantly increased after the commencement of the RTE Act, there has not been a commensurate increase in human resources required to effectively carry out all the duties under the RTE Act, including strengthening of the public school system. Tasks such as awareness building about the legal provisions, ensuring compliance of private schools, school record validation, and grievance redress take a back seat due to lack of adequate human resources.

(2) Considerable attention is given to the implementation of Section 12(1)(c), yet various shortcomings and delays plague the implementation of the RTE Act as a whole. In both the cities, there was no structural linkage between implementation of the provision of 25% and the recognition of private schools. For example, there is very little attention given as yet to validate infrastructure and teacher norms and the question of continuing recognition of private schools based on fulfilment of these norms. Thus, children studying in schools without recognition and also at times without the mandatory infrastructure would still get government reimbursement.

(3) There is lack of awareness among the disadvantaged and weaker sections about the provisions of the RTE Act, and specifically the procedures for claiming benefits under the provision. The current means of dissemination employed by the governments (websites, print media) are not very accessible in terms of language or outreach.

(4) The departments on their part have not proactively simplified the procedures and formalities of getting admission, something which could have been achieved based on a pragmatic understanding of the most marginalised children and their families. Excessive bureaucratisation and lack of transparency has created a situation wherein often it is those who can negotiate the system are the ones who get their children admitted under this provision. Requirements of proving the eligibility in terms of furnishing of income or caste certificate are cumbersome and expensive giving rise to delays, harassment and corruption, as was reported in both the cities. The Karnataka Lokayukta took cognisance of the "fake income" racket and instituted an inquiry; however, the challenges in procuring an income certificate remains. Getting the requisite certificates of eligibility requires agency and access

to some capital, both of which are not easily accessible for the marginalised groups. The implications are that the most socio-economically deserving continue to be left out of consideration altogether and have to settle for the government schools.

(5) Schools in both the cities, particularly Bengaluru, reported that reimbursement is both delayed and difficult to obtain and that this has opened up the school for greater governmental interference. Some of the schools in both the cities, which had received reimbursements, were dissatisfied with the reimbursement amounts and claimed that they had to pay for the children themselves, often by raising the fees of the general students.

(6) In both the cities, the department has not been able to address the problem of seats falling vacant either after selected students withdraw or if they drop out from the school, even though wait lists are prepared. In that sense, a vacant seat becomes a loss for the school and for the department and yet schools are required to keep these seats vacant and not admit anyone from the general category.

(7) Most of the schools studied were low-fee-charging schools and were actually charging fees less than the per-child expenditure of the government. Although these schools had benefited from the reimbursement provided by the government, they were dissatisfied because the government per-child expenditure rate had not been revised even after one year of its implementation.<sup>11</sup>

(8) Unlike Bengaluru, the directorate of education in Delhi had barely interacted with the school managements or parents' associations. This lack of communication had not only increased the distance between government and private schools in Delhi but it had also left unheard officially the ground-level concerns and grievances related to implementation, which, hence, remained unaddressed.

(9) In both the cities, the government has not published a single report about the implementation of this provision even after one year of its implementation.

### Inclusion in Schools

(1) Certain disadvantaged groups, such as children with disabilities, have been left out from the larger pool of disadvantaged children in both the cities and were not found to be admitted in the schools that were visited. In the case of Bengaluru, orphans, street and migrant children, and children affected by HIV were not found to have been admitted. On the contrary, children from SC, ST and other backward castes/ Other Backward Classes (OBC) had availed entitlements under this, with the OBC categories availing the most in Bengaluru. The official data provided in Bengaluru did not even account for admissions granted to children who belonged to other disadvantaged categories.

(2) Integration of children in the schools was largely positive given that children are very young and not aware of the differences. However, schools indicated that they anticipate problems when the children grow older and begin noticing the social differences.

(3) Social integration was easier in schools catering to children from lower socio-economic strata than in elite schools because social differences between children admitted to 25% seats and the remaining children were hardly noticeable. In schools catering to communities from lower socio-economic strata, parents of remaining 75% students were reported to have asked that their children also be considered for free seats.

(4) Parents preferred private schools because they wanted the school to fulfil their expectations of quality. The underlying premise was that government schools do not offer quality education and private schools were therefore a better choice.

(5) Parents find it difficult to provide academic support, but have been able to provide material support to the child in the form of clothes, food and school provisions.

(6) Teachers and schools were not supported to foster inclusion. Most schools considered their mandate was complete once admissions were given and hence they were not working towards bringing fundamental changes in attitudes or pedagogies that could foster inclusion.

(7) School managements were reportedly put to hardships due to governmental delays in processing reimbursements and because of excessive government interference.

(8) There is a definite sense of anxiety about the continuity and survival of the children in the schools. Schools were concerned that at higher grades, children would require more financial and academic support from home which the families may not be able to provide. However, there is little guidance and dialogue within the schools, among schools or even between schools and administration on how to ensure that children complete their schooling.

### Grievance Redress and Monitoring

The grievance redress mechanism, as mandated, is through the local authority notified by the state government, but this first line of redress had not become fully operational in either of the cities. These authorities are rarely accessed and there seemed to be no clarity on how these would function. There is almost no awareness within the departments themselves about the grievance redress functions and how these should be brought into effect. Even the State Commissions for Protection of Child Rights have been struggling without adequate resources and infrastructure. Moreover, the fact that the recommendations made by the commissions are only persuasive and not binding, do not give them a strong foothold to pull up defaulters.

### Emerging Issues

In terms of implementation, data in both the cities reveals that the issue of 25% quota in private schools is related to other questions on education policy and practice. These are summarised below:

**Scope of the Provision:** The applicability of this provision to certain types of schools, such as those affiliated to international boards and residential schools is ambiguous. These

schools, existing at one extreme end of the range of private unaided schools, are actually left out and thus the idea of the provision leading to social justice and equality of opportunity is rendered meaningless.

**Parental Choice:** The idea of a “good” school among parents favours their imagination of private schools and what they are seen as providing. In both the cities, the attraction of the “private” was found to be very strong with parents making choices based on their own criteria of quality. In both the cities, certain schools were sought after while others had no takers. Choice was generally exercised in favour of schools that catered to slightly higher socio-economic strata. Thus, the provision was seen and used as a vehicle for upward mobility.

**Emergence of Parents as Organised Stakeholders:** In both the cities, middle-class parents, especially those accessing private education but not under the 25% provision, are emerging as a key and strong stakeholder. They stand mobilised on larger policy issues of fee hike and regulation of private sector, a departure from the earlier narrow focus of parents on their child’s academic progress and schooling. These stakeholders can be seen to exercise increasing influence on how schools deal with the inclusion of marginalised children under the provision.

**School Networks:** Organised school networks and associations of private schools are becoming a common forum for challenging state interventions, and membership in these networks is seen as offering a sense of solidarity and protection to private schools. For example, schools have been hiking fees over the past few years to absorb the additional expenditures that RTE supposedly imposes and resisting state intervention in fee regulation through their private school associations.

**Minority Institutions and Applicability of RTE:** A sudden rush to seek minority status for schools is explained by the Supreme Court verdicts, first in 2012 and more recently in 2014, exempting such schools from the purview of the RTE Act. This is evident in both the cities and there is a great deal of policy ambiguity and contestation on granting such status.

**Translation of Legislative Intent into Practice:** There is poor understanding of the RTE and its purpose among the different stakeholders. Given this gap, schools fail to translate the legislation’s original intent into practice. In other words, the provision is translated merely as a top-down programme, but very little is invested in ensuring integration of the children at the school level. Thus, the focus remains on the easier, superficial target of bringing children into schools rather than focusing on how children adjust, learn and relate with each other.

**‘Deficit’ Orientation towards ‘RTE Children’:** There is a strong conviction among private schoolteachers that the home

environment plays a significant role in a child’s education. There is a perception that “RTE children” come from deficient backgrounds, and hence the role of schools and teachers should be to help the child leave their bad habits and adjust to new sophisticated surroundings. Such a patronising attitude offends the rights and dignity of children and labels like “RTE children” actually result in discrimination.

**Teachers’ Role in Inclusion:** Teachers have given little thought to their own role in fostering inclusion and there is no effort by schools towards enhancing their capacities so that they can undertake real changes in their classrooms. Most schools and teachers continue to stick to the status quo, rather than use their agency to devise pedagogical strategies that can create integration.

**Sustainability of the Provision:** Schools are uncertain about the sustainability of the provision as children move to higher grades, and they are critical of the policy of “no detention” under the RTE Act that would allow children to complete eight years of schooling without actually having mastered the competencies.

### Policy Implications

As discussed earlier, the 25% provision has been contentious and has seen a polarisation of positions among educationists, civil society actors, and policymakers on the intent and nature of the provision. Proponents in favour of the provision have mainly emphasised its inclusionary thrust, both in terms of providing access to “better quality” education that may be found in private schools and in terms of duties of hitherto exclusionary private schools to fulfil their roles in universalising elementary education. Such arguments, as we saw, align with countrywide trends of a shift to private schooling and the perceived efficiency of private schools vis-à-vis the purported dysfunctional nature of the government school system. However, even many among the votaries have interpreted this provision as a move of the state towards a system of school vouchers where the state plays the role of funder while the private sector that of the primary provider of education. On the other hand, more vociferous critics regard the provision as only symbolic in its intent and one that masks the overall neo-liberal direction of the state in recent years in its unabashed support for free play of market forces.

Policy implications from the study would necessarily have to be contextualised within these larger debates and contradictory pulls and pressures that will drive the implementation of the provision. Also, the scope of generalisation from this particular study remains modest given both the limited number of sites and schools that were covered and the early days of implementation of the provision. The latter, specifically, has implications for the extent to which the institutions and mechanisms engaged in the implementation could have been mobilised and effectively channelised in the nascent stages after the provision came into effect. For example, the intended structure and mechanisms for grievance redress and monitoring

were either not in place or had not started functioning. Despite these limitations, the study offers important insights which will help strengthen the emerging systems and processes pertaining to the implementation of the provision.

First, as in Karnataka, education departments would be undeniably strengthened with the provision of a dedicated RTE cell. However, unlike Karnataka, such a cell should be able to bring in coherence and convergence to the three functions of the government under the RTE — provision, funding and regulation of schools — and provide and coordinate an integrated system for fulfilling the state's mandate under RTE. To start with, such a cell should work in close coordination with the relevant departments of the state government to define and delimit some of the yet unclear and unresolved questions on the provision, viz, (1) mechanisms by which the system of granting recognition to private schools can be linked to the implementation of Section 12(1)(c) in private schools; (2) the definition of minority schools and the status of minority institutions in the state to prevent private schools from claiming exemption when they are not entitled to such a status; (3) guidelines on how the provision would apply to certain schools, especially those affiliated to international boards and residential schools and clear definition of norms where schools do not have a residential neighbourhood; (4) clarification on what constitute “additional costs” incurred by marginalised children as a consequence of the provision, provided for in the rules, and on the duties of the private schools to meet these additional costs.

Second, ensuring clarity on the persisting ambiguous provisions does not diminish the role of monitoring mechanisms envisaged under the RTE Act, namely the local authorities and State Commissions for Protection of Child Rights. State governments should strengthen these independent structures by providing them with adequate funds and human resources so that they can function effectively. Also, the state governments should seriously consider the recommendations and decisions made by these bodies and implement the same. The functions and powers of these bodies should be publicised widely through both the mass media and with the involvement of civil society organisations so that aggrieved parties can access these forums provided by the RTE Act. Indeed, in a context where recent studies have shown that the “internal dynamic” of the administrative structure of the education department often becomes a hindrance towards attainment of intended objectives (Sharma and Ramachandran 2009), these independent structures and mechanisms could become the means through which the accountability of the department itself is strengthened.

Third, education departments would be able to substantially strengthen the implementation of the provision by assuming a more focused regulatory role even within their current constraints and challenges. This role would necessarily have to be geared towards possibilities of both explicit violation of the provision and implicit unintended outcomes that have a bearing on the provision. The former could be secured through random checks on “recognition” granted to private schools

and fulfilment of recognition norms, on adherence of private schools to meeting the norms of “additional costs” incurred by marginalised children, and on compliance of schools with fostering inclusion. Complementarities could very well be generated by endorsing an active role of civil society in these processes given that it is slowly emerging as a strong watchdog in the education ecosystem. The department could work in close collaboration with civil society organisations to effectively follow up on these processes. As in Karnataka, education departments could prepare formats for compliance reports for schools to provide information on issues such as “cases of drop-outs from the 25% seats and reasons for this”. The more implicit unintended outcome is at present visible in the emerging trend of hike in school fees that schools seek to rationalise in terms of the “additional costs” incurred on account of the 25% provision. Such a measure may also pave way for polarisation between the parents of children admitted under the RTE quota and the general students, making it more difficult to achieve inclusion. The regulatory role of the education departments should, therefore, extend to scrutinising the fee structure and fee increases of the private schools and examining the financial logic of such increases. This is important as the rationale of “increased fees for regular schoolgoing children” is often being used as a lobbying argument by the private schools to mobilise its predominant middle-class clientele against the 25% provision.

Fourth, private schools, at their level, should ensure participation of parents of children admitted under the RTE Act in the parent-teacher associations and periodically conduct workshops with teachers on handling class dynamics, adapting pedagogies and remediation wherever required. In turn, education departments should aim to convene periodic meetings with private schools at the block level to discuss the various issues related to admissions, reimbursements and manner in which inclusion is taking place within the schools. Such meetings have the potential of becoming platforms for sharing ideas, recognising innovative practices, reviewing challenges, and addressing concerns and clarifications. Participatory forums facilitated both by private schools and education departments should mobilise academic and non-academic support from key stakeholders towards genuine inclusion. This would also necessarily entail a continuing dialogue with these stakeholders, including parents of children who do not come under the 25% provision, to engender a vision of inclusion that is not delimited as an issue of concern only for parents and children who come under the 25% provision but is seen as a collective responsibility of the school community.

#### **Need for Simplicity of Processes**

Finally, as in any other effort by the state to reach out to marginalised sections, much of the success of the provision would depend on the simplicity of the processes adopted. Education departments should streamline the admission process so that there is transparency, fairness and simplicity in the procedures. The forms should be standardised and accessible in the regional languages used in the state. The receipt of applications

and verifications can be decentralised, but the admission could be centralised at the block level to allow parental choice and maximise opportunities for admission. The departments should also evolve a method of reducing vacant seats and, therefore, the number of disappointed parents, by better listing and matching of schools and seats available. Likewise, the education departments, through their district commissioners, should streamline, simplify and expedite the process of granting different eligibility certificates such as income, caste, and disability certificates. A single-window clearance for this would be highly desirable and states should debate on bringing this under the purview of right to public services provisions.

The study shows that there is a strong intent on part of the education departments in both Karnataka and Delhi to be in the forefront in effecting the implementation of the 25% provision in the respective states. Undoubtedly, as outlined above, more can be done in terms of the regulation and monitoring aspects of the provision. A crucial first step, towards this would be to spread more awareness about the provision through the mass media. This, supplemented by collaboration with civil society organisations in public awareness campaigns, monitoring of admission process and helping marginalised families to claim the entitlements under the provision, would possibly see a more effective realisation of the provision in the forthcoming years.

## NOTES

- 1 Unless otherwise stated, reference to "the provision" means Section 12(1)(c) of the RTE Act, 2009.
- 2 The study was supported by Oxfam India and was collaboratively conducted by Tata Institute of Social Sciences, Azim Premji University and Centre for Social Equity and Inclusion.
- 3 "Public schools" here refer to fee-charging private schools, modelled on the British "public school", which were catering primarily to an elite population group.
- 4 See (2012) 6 SCC 1.
- 5 Section 18(3) of the RTE Act allows the state to derecognise schools that do not adhere to the stipulated norms of recognition.
- 6 Article 30(1) of the Indian Constitution states that all minorities, whether based on religion or language, have a right to establish and administer educational institutions as per their choice.
- 7 *Pramati Educational and Cultural Trust & Ors versus Union of India & Ors* (Writ Petition (C) No 416 of 2012).
- 8 See URL: <http://164.100.47.132/LssNew/psearch/QResult5.aspx?qref=136729>; accessed on 1 October 2013.

- 9 The following Analytical Report of the Sarva Shiksha Abhiyan, Government of Karnataka, has been used for this section; URL: [http://www.schooleducation.kar.nic.in/databank/AnalyticalReport1213\\_Eng.pdf](http://www.schooleducation.kar.nic.in/databank/AnalyticalReport1213_Eng.pdf); accessed on 16 September 2013.
- 10 Although the study initially planned to collect data from only 25 schools, nine additional schools were done because the schools had given appointments.
- 11 Although the study covered implementation of the provision in one academic year 2012-13, some of the school visits were conducted after the commencement of academic year 2013-14 which provided data on financial reimbursements over two years.

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