



THE BRIGHT SPOTS

Status Of Social Inclusion
Through RTE Section 12(1)(c)
2019

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THROUGH RTE SECTION 12(1)(c)

About Indus Action

Indus Action, set up in 2013, is a non-governmental organization anchored in New Delhi, India with a mission to enable the disadvantaged, sustainable access to legislated rights.. Indus Action's overarching goal is to expand access to transformative legislated rights for disadvantaged families. The organization is currently focused on enabling children to gain access their right to Section 12(1)(c) of the Right to Education (RTE) Act. This section mandates 25% reservation in entry-level classes in unaided, non-minority, private schools for children belonging to economically and socially disadvantaged groups. The organization is currently active in 19 states and focuses on a mix of technology-based interventions and policy advocacy, to execute RTE Section 12(1)(c), by supporting and with the support of state governments.

Contributing Authors

The Bright Spots Report, 2019, is a collaborative effort of the following authors from Indus Action

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FOREWORD

The Bright Spots Report, 2019, by Indus Action is the second in this series and attempts to showcase the status of implementation of Section 12(1)(c) of the RTE Act, 2009. This report presents the importance of this policy in the realization of the dream of an inclusive India. It is placed amidst the challenges and criticisms the policy has been currently facing.

“All things appear and disappear because of the concurrence of causes and conditions. Nothing ever exists entirely alone; everything is in relation to everything else.”, said the Buddha. Thus, we need to view the impact of Section 12(1)(c), relative to other events in the country and the world. In an increasingly segregated and polarized world, this policy provides optimism and a potential way forward for inclusion. This report also ties into the currently relevant discussion of the Draft National Education Policy, 2019. It presents a holistic view around both the recommendations and the challenges presented in the Draft NEP, concerning Section 12(1)(c).

The authors believe that the narrative should focus on reducing gaps and in providing opportunities to the most marginalized sections of our communities. There are systems and champions who are taking the initiative to ensure this happens. In the BSR, 2019 we get a chance to appreciate these unsung leaders, as well as get inspired by their actions on the ground, which impact the lives of many.

The idea of a Bright Spots Report emerged from that very premise, that we highlight the best practices happening around the country, so that these don't remain just positive deviants in the society, but help the rest of us to move in the same direction. The previous version of the report brought out a whole gamut of issues with regard to the policy and implementation gaps, which made access difficult for the eligible parent and child.

This second version targets some of the germane issues relevant to any rights-based policy implementation, such as a system of grievance redressal which is effective and simple, the tracking of retention, checking that the policy has its intended impact, creating a transparent reimbursement structure, to ensure that the monies being spent are actually spent in the right manner, and reaching the actual eligible family. It also presents insights on the school choice patterns by parents, which can be helpful to States in improving choice. The legal sections presents the justiciability side of the policy-making cycle, and present the relevant judicial discourse around the issue.

Our hope is that this report serves as a useful knowledge repository to inform a rigorous public discourse around this progressive and controversial policy. We invite critical feedback on ways to improve sections within the report or follow-up research questions that we could pursue. With this relentless pursuit for improved effectiveness of this policy, we believe that we can tilt the scales of justice in our classrooms.

Tarun Cherukuri
Founder & CEO, Indus Action



Executive Summary

In the tenth year of the existence of the Right of Children to Free and Compulsory Education Act (RTE), 2009, we see a very different landscape of education in the country. There is growing awareness and demand within Indian society, to not just have access to education, but to have access to high quality education. Through its 38 sections, the RTE Act gives directions for standards of school infrastructure, teacher quality, describes the role of the state and the centre, and clarifies inclusion of children with special needs in mainstream education, among other topics.

The provision which this report focuses on, is Section 12(1)(c) of the Act. The Section states that, *"12. For the purposes of this Act, a school: (1) (c) Specified in sub-clauses (iii) and (iv) of clause (n) of section 2 shall admit in class I, to the extent of at least twenty-five per cent of the strength of that class, children belonging to weaker section and disadvantaged group in the neighbourhood and provide free and compulsory elementary education till its completion: Provided further that where a school specified in clause (n) of section 2 imparts pre-school education, the provisions of clauses (a) to (c) shall apply for admission to such pre-school education."* (The Right of Children to Free and Compulsory Education Act, 2009).

The rationale behind the inclusion of Section 12(1)(c), was that inequitable and disparate schooling reinforces existing economic and social hierarchies, and promotes an indifference towards the plight of others in society. The spirit of the Act enshrines in it the belief that when children from different backgrounds and abilities, study together, in one classroom, they would be able to achieve their highest potential. This would also lead to reducing the social divide in the future, as these children would be the ones weaving together a new fabric of society, which would be tolerant of differences, inclusive of identities, and celebratory of diversity.

This report is the second in the series of Bright Spots Reports, and aims to highlight the implementation of the policy, on the ground. 3 major highlights at the end of the decade are : over 41 lakh students are admitted/studying in private schools through this provision, 33 states/UTs have notified specific categories under the EWS/DG groups and 17 states/UTs have notified the Per Child Cost (PCC) borne by the state.

The Bright Spots Report, 2019, also provides recommendations and a sustainable way forward for the policy, while touching upon the various challenges faced by multiple

stakeholders. The Draft National Education Policy (NEP), 2019, mentions various recommendations and challenges which we aim to discuss and include in this report, as they would change the nature of implementation and make the provision more inclusive in practice.

The first chapter of the report provides the historical context that led to the creation of the RTE Act, 2009. It also highlights the different research studies and papers written on the subject to gain an overall understanding of views around it, and highlight gaps in literature, which showcase the post-admission environment in schools. We also present the relevance of this provision, vis-à-vis international human rights and education standards. The rest of the chapter, focuses on a sustainability matrix as well as the Draft NEP recommendations for RTE Section 12(1)(c).

The second chapter presents the diagnostic framework created to understand the current implementation and policy contexts in states, and examines the ideal/aspirational implementation to be achieved. This includes the quantitative and qualitative aspects of the sustainability matrix, which was created by gathering multi-stakeholder inputs from the ground as well as secondary research. It also takes into consideration the recommendations and concerns from the Draft NEP. The next 5 chapters elucidate on how to achieve the sustainability goals within this matrix.

The third chapter delves into the technological base of the entire structure of setting up an online system for Section 12(1)(c), that is, the Management Information System (MIS) used by governments to manage the RTE process. It describes the different modules present in the

MIS, as well as the rationale for using them. These are recommended for a more transparent and efficient execution of the policy. The chapters that follow, are placed in the order in which they would be linked in an MIS.

The fourth chapter, delves into the enrolment process, which focuses on the concept of school choice, by analysing data specifically from the states of Uttarakhand, Delhi, Haryana and Chhattisgarh. It then presents a comparative analysis of different lottery logic algorithms, which showcase the best possible ways, to match an available seat to an applicant.

The fifth chapter, focusing on reimbursements, directs the reader towards the procedures involved in claiming and receiving funds for the implementation of the policy. It speaks of Centre-State relations, expectations from the state and schools, and the fund-flow model. It highlights the per-child cost, as notified by state governments, and the parameters associated with it. In light of the challenges faced by multiple stakeholders involved in this process, this chapter ends by providing recommendations for an online reimbursement module, linking it to PFMS, to ensure a streamlined flow of funds to the states and thus the schools.

The sixth chapter touches upon the topic of Student Tracking in order to understand a child's post-access context in schools. The primary focus is on the need for student tracking, as well as the parameters that can be tracked easily to assess whether the child is able to thrive in possibly a new ecosystem, and whether there is adequate support provided for better integration. This includes recommendations such as tracking attendance, class ranking, and using common assessments

to gauge actual student outcomes, as well as conducting social audits for multi-layered data verification.

The seventh chapter brings the reader's attention to a very important aspect of any policy - Grievance Redressal. It provides a background to the topic, as well as the current state of grievance redressal mechanisms in different states across the country. There is a specific mention of the existing mechanism in Madhya Pradesh and Chhattisgarh. The appellate authority for addressing child-rights issues, is the National (or State) Commission for Protection of Child Rights. There are recommendations on how and why this body needs to be made part of the process for grievance redressal, as well as other recommendations on the grievance redressal system, overall.

The eighth chapter of this report, focuses on the topics of integration, social inclusion, and school autonomy. It tries to throw light on the subject of discrimination and integration in schools. The challenge presented from the private school players, of not having enough autonomy, is also briefly touched upon. The section ends with a discussion on the role of minority institutions in creating an inclusive space within society, and the legal provisions for the same.

The ninth chapter relates to the legal developments for Section 12(1)(c). It details some of the current contentions and debates around the implementation and dilution of the policy in certain states. It focuses on the state of Karnataka and the High Court judgement, which has tried to remove the right to choose the school where the parent/caregiver wants to send their child. It also provides a summary list of pending litigation with respect to this provision of the RTE Act.

In conclusion, this report presents the overall recommendations for the continued success of RTE 12(1)(c), and the challenges and limitations encountered while writing this report. In light of the New Education Policy which is due in the last quarter of 2019, the finer details of policy implementation need laser sharp focus and increased attention. As India marches into a future of global significance, we believe that the successful implementation of this policy in the coming decade and beyond, will prepare the next generation with key life skills to be global citizens.

Abbreviations

AWP&B	Annual Work Plan and Budget
DG	Disadvantaged Group
DoE	Department of Education
DPI	Directorate of Public Instruction
EWS	Economically Weaker Section
GIS	Geographic Information System
GSDP	Gross State Domestic Product
MHRD	Ministry of Human Resource Development
MIS	Management Information System
NCPCR	National Commission for Protection of Child Rights
PAB	Project Approval Board
PFMS	Public Financial Management System
PGMS	Public Grievance Management System
QCI	Quality Council of India
RTE	Right to Education
SCPCR	State Commission for Protection of Child Rights
U-DISE	Unified District Information on School Education
UI	User Interface
UX	User Experience

Definitions

'Below Poverty Line' (BPL) card: is issued to a household if the household is classified to be so as per the specific criterion decided in advance. Periodic census is carried out to identify such households.

'SEBC', 'OBC', 'SC', and 'ST' categories referring to Socially and Educationally Backward Classes, Other Backward Classes, Scheduled Castes and Scheduled Tribes, are the legal and administrative terms indicating position of various groups in the traditional caste system around which social relations were organized.

Covenant Rights: The covenant commits its parties to respect the civil and political rights of individuals, including the right to life, freedom of religion, freedom of speech, freedom of assembly, electoral rights and rights to due process and a fair trial. (International Covenant on Economic, Social and Cultural Rights)

Enrolment-rate: This is defined as the ratio of the number of lottery winners for a particular year to the final admissions that took place that year.

Entry-level: Class 1, Nursery and Kindergarten(KG) are defined as Entry Level classes for the RTE 25% provision.

Lottery-dropouts: The children who did not get enrolled to the school allotted after winning the lottery for an RTE Section 12(1)(c) seat.

RTE 25%: This is a term used synonymously to the provision of Right to Education Section 12(1)(c).

School-dropouts: The children who were enrolled in a school under the provision of RTE Section 12(1)(c) but moved out of the respective school within six months of joining.

List of Tables and Figures

Figure 2.1: States that have notified their Per-child costs for Reimbursements

Figure 2.2: Total number of children admitted/studying under Section 12(1)(c) of the RTE Act, nationally from 2012-13 to 2018-19

Figure 2.3: Percentage change in the potential number of Class 1 seats available under Section 12(1)(c)

Figure 3.1: Model MIS System

Figure 4.1: Responses for time-taken to fill the application form

Figure 4.2: Responses for who filled the online application form

Figure 4.3: Responses for how information regarding the schools were obtained

Figure 4.4: Responses for what the factors that influenced the choice of schools were

Figure 4.5: School selection panel in the Online MIS in Delhi

Figure 4.6: School selection panel in the Online MIS in Chhattisgarh

Figure 4.7: Model User Interface for School Selection panel

Figure 4.8: Types of Lottery algorithms applicable to RTE Section 12(1)(c)

Figure 4.9: Comparison of Lottery Algorithms based on test cases

Figure 5.1: Process flow for reimbursement claims under Section 12(1)(c)

Figure 7.1: Process flow of a centralised grievance redressal system

Figure 9.1: Availability of Primary Stage(I-V) Schooling Facility

Figure 9.2: Availability of Upper Primary Stage (VI-VIII) Schooling Facility

Table 2.1: Sustainability Benchmark

Table 2.2: Year-wise number of children studying under Section 12(1)(c), across states

Table 2.3: Trends in Reimbursements received by the States from the Centre- an analysis of amounts proposed and approved

Table 2.4: Fill Rate, School Participation Rate and Reimbursement Rates across select states

Table 5.1: Claims for reimbursements and approved amounts across states in PAB 2019-20

Table 5.2: Details of notified Per-Child Costs across states

Table 8.1: Summary of important case judgements in the minority status debate

TABLE OF CONTENTS

Chapter	Page No.
About Indus Action	iv
Contributing Authors	v
Acknowledgements	v
Foreword	vi
Executive Summary	ix-xi
Abbreviations	xii
Definitions	xiii
List Of Tables And Figures	xiv
Table of Contents	
Chapter 1: Introduction	1 - 22
<i>Part I : 10 Years Of RTE - A History</i>	<i>2 - 4</i>
<i>Part II : 12(1)(c) Literature Canvas</i>	<i>5 - 13</i>
<i>Part III : Relevance Of Section 12(1)(c)</i>	<i>15 - 20</i>
<i>Part IV : Introduction To Diagnostic Framework</i>	<i>21 - 22</i>
Chapter 2: Diagnostic Frameworks	23 - 31
<i>Part I : State Updates With Respect To Sustainability Benchmarks And Matrix</i>	
Chapter 3: Online MIS For Implementation Of RTE Section 12(1)(C)	32 - 34
<i>Part I : MIS Modules</i>	
Chapter 4: Enrollment Process	35 - 53
<i>Part I : School Choice</i>	<i>36 - 46</i>
<i>Part II : Lottery Logic</i>	<i>48 - 53</i>
Chapter 5: Reimbursement	54 - 63
<i>Part I : Historical Context</i>	<i>55 - 56</i>
<i>Part II : Challenges</i>	<i>57 - 61</i>
<i>Part III : Recommendations</i>	<i>62 - 63</i>
Chapter 6: Student Tracking	64 - 70
<i>Part I : Background</i>	<i>65 - 66</i>
<i>Part II : Examples Of States</i>	<i>68</i>
<i>Part III : Recommendations</i>	<i>68 - 70</i>
Chapter 7: Grievance Redressal	71 - 79
<i>Part I : Background</i>	<i>72 - 73</i>
<i>Part II : Status Of Grievance Redressal Across States</i>	<i>73 - 77</i>
<i>Part III : Recommendations</i>	<i>78 - 79</i>

Chapter 8: Integration And Autonomy	80 - 89
<i>Part I : Discrimination And Integration Challenges</i>	81 - 83
<i>Part II : School Autonomy</i>	83 - 84
<i>Part III : Minority Institution Debate</i>	86 - 89
Chapter 9: Legal Developments	90 - 104
<i>Part I : Extending RTE To Class 12</i>	91 - 92
<i>Part II : Karnataka Judgement</i>	94 - 99
<i>Part III : Pending Litigation</i>	101 - 104
Chapter 10: Conclusion	105 - 107
References	109 - 116
Appendix - 1 - Leading Cases On The Role Of State And Nonstate Actors wrt RTE	117 - 120
Appendix - 2 - ICESCR	121
Appendix - 3 - Application windows across states	122
Appendix - 4 - Understanding Game Theory	123
Appendix - 5 - Rationale For Section 12(1)(c) As Provided By MHRD	124 - 125

A group of children are smiling and looking towards the camera. In the background, there is a large, colorful banner with various patterns and colors, including red, yellow, blue, and green. The children are dressed in casual clothing, and the overall atmosphere is bright and cheerful.

CHAPTER 1: INTRODUCTION

PART I : 10 YEARS OF RTE - A HISTROY

PART II : 12(1)(c) LITERATURE CANVAS

PART III : RELEVANCE

PART IV : DIAGNOSTIC FRAMEWORK

The introductory chapter of this report encapsulates the history that led to the passage of the Right of Children to Free and Compulsory Education (RTE) Act, 2009. It is also a literature review, which can provide an in-depth understanding of multiple issues related to Section 12(1)(c) of the RTE Act. We then go through the relevance of Section 12(1)(c) in the light of international human rights. The last part of the introduction explains the direction that this report takes, and the reasoning behind creating a sustainability matrix as well as understanding it in connection to the recent National Education Policy Draft, 2019.

Part I : 10 years of RTE - A history

Now, in the 10th year of existence, the timeline below provides a historical sequence of events that led to the creation of the RTE Act, and thus Section 12(1)(c).

According to Article 45, Directive Principles of State Policy, Indian Constitution:

“the state shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.”

1968 - First National Education Policy - reaffirms the government’s commitment to provide compulsory education to all children below the age of 14.

1976 - Education moved to the Concurrent List from the State List allowing the Union government to enact laws on it.

1986 - Second National Education Policy - Government’s commitment to ensure compulsory education for all children below the age of 14 reaffirmed.

1992 - *Mohini Jain vs. State of Karnataka* - Supreme Court recognizes that while the Right to Education has not been guaranteed under Part III of the Constitution as a fundamental right, it is clear on a cumulative reading of the Constitution that the founding fathers made it obligatory for the state to provide education for all its citizens. The Court further specified that the state is obligated to establish institutions to enable the citizens to enjoy their right to education and when the state grants recognition to a private educational institution, it creates an agency to fulfill its obligation under the Constitution.

1992 - India accedes to the United Nations Convention on the Rights of the Child, which recognises a child’s right to free and compulsory education.

1993 - Unni Krishnan, J.P. & Ors. v. State of Andhra Pradesh & Ors - Supreme Court holds that the Right to Life granted under Article 21 of the Constitution implied the Right to Basic Education. The decision essentially lifts compulsory elementary education from a directive principle to a fundamental right.

1997 - A committee of State Education ministers recommends an amendment to the Indian Constitution to make the right to compulsory and free elementary education upto the age of 14, a fundamental right.

1997 - A Bill to amend the Constitution and make education a fundamental right under Article 21 of the constitution introduced in the Rajya Sabha.

1998 - The Law Commission of India recommends that a central legislation be enacted to implement the right to education. The Law Commission also stated that the private educational institutions at that time could not be forced to impart free education to “all the students admitted to their institutions” but considering the Supreme Court verdict in Unnikrishnan case in 1993, the state or the affiliating board may require the private education institutions to provide free education to 50% of their students. The Commission recommended that these students be selected by the private institutions in consultation with local authorities and parent-teacher associations and that to begin the number of students receiving free education can be 20% of their intake. The Law Commission believed that this would allow unaided schools to join the national endeavour in providing free/subsidised/universal education to students and lower the financial burden on the state.

2002 - The Constitution (Eighty-Sixth amendment) Act, 2002 inserts Article 21 A in the Constitution - *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.*

2003 - The first draft of the law envisaged by the amendment act to provide free and compulsory education to children in the age group of six to fourteen years circulated for public review. In line with the Law Commission’s recommendation of beginning with a 20% reservation in unaided schools for disadvantaged sections of the society, the first draft of the bill sought to reserve a maximum of 20% seats in recognised but not substantially aided schools for children belonging to families living below the poverty line. The revised draft of the bill, circulated in 2004, also kept the provision for reservation of seats for children belonging to families living below the poverty line.

2004 - the Central Advisory Board of Education (CABE) constitutes a committee to draft the legislation to provide free and compulsory education as envisaged in Article 21(A) and examine other issues related to free and compulsory elementary education.

Among others, one of the key questions listed down for the committee to evaluate was, on what the relative roles of government and non-government schools in achieving universal elementary education should be. The role of private schools in universalizing elementary education was intensely debated by the sub-committee framing the draft legislation. One opinion was that the bill should not infringe upon the autonomy of the private schools and another opinion was that education is supposed to foster social integration. It was noted that in the case of many private schools, social and class segregation by separating children of elite classes through a different set of schools was being promoted. The subcommittee also received suggestions for nationalisation of private schools with the argument being that the quality of schools could not be uniform till private schools were promoted at the elementary stage.

The draft bill submitted by the subcommittee included a section which mandated reservation of 25% of all seats in unaided schools for children belonging to disadvantaged sections of the society and living within the neighbourhood where the school was situated, a concept as envisaged in the Kothari Commission report in 1966.

The second draft mandated that allocation of 25% of the seats reserved for disadvantaged sections of the society should be done randomly. When discussing the second draft of RTE, the committee also discussed the reimbursement amount the government would pay to the private schools for the 25% seats which would be reserved once the act came into force. There was broad agreement that the reimbursement amount should equal the government's per child expenditure.

The third draft of the bill was put in front of the CABE committee on 5th June, 2005 and saw a minor change in the section describing responsibilities of unaided neighbourhood schools. The language was changed to reserve 25% seats in unaided schools for "weaker" sections of the society instead of "disadvantaged" sections. The draft also clearly stated that the reservation quota of 25% will be applicable for admission to class 1 and if the school has pre primary section, the 25% reservation clause will apply to admissions to those classes as well. The rationale behind having reservations in admissions to the introductory class and not intermediate classes was that children who have spent time in a segregated and homogenous environment and have developed certain norms and behavior cannot be expected to transform and adjust to a heterogeneous environment.

2009 - the Right of Children to Free and Compulsory Education Bill, 2008, was passed in both Houses of Parliament and becomes law after receiving the President's assent in August 2009. Article 21-A and the RTE Act comes into effect on April 1, 2010.

2012 - *Society for Unaided Private Schools of Rajasthan v Union of India & Another* - the Supreme Court of India upholds the constitutional validity of Section 12 of the RTE Act. The Section mandates that all schools, both state-funded as well as private, set aside 25% of seats in entry level classes for children from economically and socially disadvantaged backgrounds. The Court exempts private minority schools from the provision as this would otherwise constitute a violation of the rights of minorities to establish private schools under the Indian Constitution.

Part II : A Literature Canvas for Existing Literature on RTE, specifically Section 12(1)(c)

The first decade of the Right to Education Act (2009-2019) has seen multiple pieces of academic literature being published, to comment on and make sense of the policy and its provisions along with attempting to gauge the impact of the same on the community as a whole.

We will be discussing some papers written on Section 12(1)(c) of the RTE Act, in detail in this section. They are arranged in order of most recent to older publications. We aim to provide a canvas of the existing literature, with the aim that these documents be accessed when there is a necessity for greater understanding about certain topics within the policy. This hope is also for interested researchers/academicians to analyse the gaps in literature and research from this repertoire, and thus pave the way for further research.

Some of the main themes discussed in this section are:

- determinants of parental school choice,
- role of private schools and the government in successful implementation of the policy,
- social inclusion,
- learning outcomes,
- per child cost,
- private and public spending on education, reimbursements

1. Alok Prasanna Kumar, 2019, Hollowing out the Right to Education¹

This paper speaks about the Karnataka High Court judgement², and of how it is a mis-interpretation of the Act.

“The logical endpoint of this judgment is a dystopia where government schools are reserved for those who cannot afford to pay the high fees charged by private schools, ensuring a segregated education system that is fundamentally at odds with the constitutional values of equality and the right to education”, argues the author.

2. Indus Action, 2019, School Readiness Program, Pilot Assessment Report - SRP Playbook

With the belief that socio-emotional and cognitive development in early years cannot be achieved without building parental skills for cognitive and emotional stimulation, Indus Action launched the School Readiness Program. The pilot assessment report, provides the aims of the study, to find sustainable, scalable solutions to enhance school readiness in three to five year old children who come to Anganwadis. This is hoped to be achieved by engaging parents in building sustainable habits of cognitive and emotional stimulation through a toolkit and through the orientation of Anganwadi Samiti Chairpersons towards key concepts of school readiness and early childhood care. The major findings of the program were that caregiver awareness and print material at home do have an impact on the school readiness of three to five year olds. Caregivers and the home environment are key stakeholders in early childhood development. The engagement has to be planned in order to fit into the caregiver’s schedule to be able to garner effective participation. The SRP

¹ (2019, June 22). Hollowing Out the Right to Education | Economic and Political Retrieved September 26, 2019, from <https://www.epw.in/journal/2019/25/law-and-society/hollowing-out-right-education.html>

² The Karnataka government passed an amendment to its RTE Rules making it non mandatory for private unaided schools to admit economically-disadvantaged students if there are government or aided schools in the same locality.

Playbook, provides an easily adaptable toolkit, for parental engagement in their child's learning.

3. Right to Education Forum, 2018, Status of Implementation of The Right of Children to Free & Compulsory Education Act, 2009³

With respect to Section 12(1)(c), this report talks about the fact that only 15 out of 36 states and UTs have sought funds from the central government for implementation of the policy, by 2016-17. It also talks of the lack of a Grievance Redressal System, and the reasons behind why parents prefer choosing a school starting at pre-school over Class 1.

4. Abhay Kumar, Sudheer Kumar Shukla, Mary Panmei, Vir Narayan, 2018, Exclusion in Elementary Education and the RTE Act⁴

This paper examines exclusion in elementary education before and after the RTE Act came into effect. Far from the universalisation, there remain exclusions across gender, socio-religious and economic groups. In terms of the current educational attendance and literacy rates, rural-urban, male-female gaps have narrowed, while, Muslim groups remained excluded even more than ST and SC. There is a marked shift in school choice from government to private schools. Incidence of detention has still been observed and is found to be more in the rural areas. Free education has declined invariably in all the categories under study. Monthly Per Capita Expenditure on Elementary Education (MPCEE) has increased three fold during the study period and exclusion in terms of MPCEE has widened.

³ (n.d.). The Right of Children to Free & Compulsory Education Act, 2009. Retrieved September 25, 2019, from <http://www.careindia.org/wp-content/uploads/2018/12/Status%20report18.pdf>

⁴ (2018, September 18). (PDF) Exclusion in Elementary Education and the RTE Act. Retrieved September 26, 2019, from https://www.researchgate.net/publication/327719855_Exclusion_in_Elementary_Education_and_the_RTE_Act

5. Vijay Kumar Damera, 2018, Essays on School Choice: Empirical Evidence from Implementation of India's National School Choice Policy⁵

This study, based on a large representative sample from Karnataka, specifically aims to analyse whether the learning and psychosocial outcomes of lottery-winning children are different than that of those who do not win the lottery. The topics touched upon are private school effects on learning levels for children entering through RTE, efficacy (among other psychosocial factors), determinants of parental choice for schools, mistargeting of beneficiaries for the policy. The key findings are that the policy has a positive effect on self-efficacy, particularly for girls. In a study conducted for 1.5 years in Karnataka on a sample of 1616 students, it was noted that girls gained more out of RTE 12(1)(c) than boys. There were no significant differences observed in test scores of lottery-winning and losing children on a range of subjects. However, policy beneficiaries performed significantly better on self-efficacy, than non-beneficiaries. Evidence of the analysis to investigate non-impact, establishes that the policy has been mistargeted, allowing ineligible households to apply, and deterring deserving low-income households from participating.

6. Amrishi Dongre, Ankur Sarin and Karan Singhal, 2018, Can a mandate for inclusion change school choices for disadvantaged parents? – Evidence from Urban India⁶

The authors have researched school choice under the policy in Ahmedabad, Gujarat. Empirical evidence shows that disadvantaged households have increased access to private schools, which typically/might have English as the medium of instruction, are further away

⁵ (n.d.). Essays on school choice - ORA - Oxford University Research Retrieved September 22, 2019, from <https://ora.ox.ac.uk/objects/uuid:4d713003-6586-4d40-9b60-41c794544bed>

⁶ (n.d.). Can a Mandate for Inclusion Change School Choices ... - SSRN. Retrieved September 22, 2019, from <https://www.ssrn.com/abstract=3308726>

from their homes, and charge a higher tuition fee than schools the families would have had otherwise access to. The study also finds that beneficiaries who are more resourceful among the disadvantaged, in terms of wealth, parental education, female mobile ownership and with an ability to speak the local language, are more likely to get allotment in schools. It also talks about the potential of the policy, keeping in mind the different implementation challenges.

7. Gautam Rao, 2018, Familiarity Does Not Breed Contempt: Generosity, Discrimination and Diversity in Delhi Schools⁷

Gautam Rao's findings support the view that increased interactions across social groups, especially in childhood, can improve intergroup behaviours. He also finds that having poorer classmates makes [by comparison] richer students (i) more prosocial, generous and egalitarian; and (ii) less likely to discriminate against poor students, and more willing to socialize with them. One suggestion from this study is that school policies should be evaluated on social behavioural outcomes, along with learning outcomes.

8. NCPCR, 2018, A Study on Implementation of Section 12(1)(c) of RTE Act, 2009 in Delhi pertaining to Admission of Children from Disadvantaged Sections in Private Schools⁸

National Commission for Protection of Child Rights (NCPCR) has been mandated under Section 31 of the Right of Children to Free and Compulsory Education (RTE) Act, 2009 to examine and review the safeguards of the rights provided under the Act and to recommend measures for its effective implementation. This

⁷ (2014, July 18). Familiarity Does Not Breed Contempt: Diversity Retrieved September 22, 2019, from <https://scholar.harvard.edu/rao/publications/familiarity-does-not-breed-contempt-diversity-discrimination-and-generosity-delhi>

⁸ (n.d.). A Study on Implementation on Section 12(1) (c) of RTE Act Retrieved September 23, 2019, from [https://qcin.org/nbqp/knowledge_bank/uploads/2018/10/1539259363_Education%20RTE%2012%201%20\(c\)%20Report.pdf](https://qcin.org/nbqp/knowledge_bank/uploads/2018/10/1539259363_Education%20RTE%2012%201%20(c)%20Report.pdf)

report presents qualitative as well as quantitative analysis of compliance of admissions under the policy, dropout rates, and inclusive environments in schools, in Delhi. It focuses on analyzing the implementation of the act in its true spirit, and not merely as a means for admission.

A few key quantitative findings were: based on the data submitted by school, the analysis of the overall compliance of RTE in Delhi, shows an increasing trend every year, but the rate of improvement has declined and there was no increase (0%) from 2015-16 to 2016-17. In terms of zonal comparisons, Zone 4(North-East), and Zone 22 (South West B), had performed the worst, with a high number of schools and very low compliance. Another interesting finding is that of the pre-primary and primary levels, a major share of the dropout of children is at the primary level.

9. DCPCR, 2018, Inclusive Classrooms: A Study of the Implementation of the Right to Education Section 12(1)(c) in Delhi⁹

The report discusses about moving beyond the 'Right to Admission', to retention and socially inclusive classrooms, which reflect the true spirit of the act. It also looks at the barriers to the free and compulsory education that should be provided to children. It focuses on policy implementation through 4 specific questions - Exclusion and Inclusion Statistics in micro-targeting, Tracking of post admission effects, Sustainable Access to Grievance Redressal mechanisms, and What and How of Socially Inclusive Schools. The report suggests ways to create a socially inclusive environment within schools, by employing a variety of methods.

⁹ DCPCR, Government of Delhi. (2018). Inclusive Classrooms: A Study of the Implementation of The Right to Education Section 12(1)(c) in Delhi, 2018. Retrieved from http://dcpcr.delhi.gov.in/wps/wcm/connect/doiit_dcpcr/DCPCR/Publication/Inclusive+Classrooms

10. Indus Action, 2018, The Bright Spots : Status of Social Inclusion through RTE Section 12(1)(c)

The Bright Spots Report, 2018, which is a precursor to this edition, spoke of policy and implementation gaps in Section 12(1)(c), such as income limits and definitions of EWS, entry classes, lack of clarity in document requirements, lack of designated application centres, age limits for entry classes, lack of next steps after students clear Class 8, and the prevalence of ancillary fees, which create roadblocks in the implementation of the policy. The report also describes a model reimbursement framework for private schools, as well as the benefits of setting up an integrated MIS system for implementing the policy.¹⁰

11. Azim Premji University, 2018, School choice in low-information environments: A study of perceptions and realities in four states¹¹

This research paper majorly focuses on two aspects of the policy, namely school choice and the quality of schools, in four states - Chhattisgarh, Karnataka, Rajasthan, Uttarakhand. It throws light on the fact that parental choice of schools, is not always well-informed, as parents don't always have accurate information about the school quality available before making their choice.

12. Hera Shakil, Indus Action, 2018, Beyond academic outcomes : Are non fee paying students socially included in private schools?

This paper refers to a sociometric study conducted in Delhi to understand social inclusion in the classroom. The main finding of the study is that non fee paying groups in middle income and high income schools are reaching out to form friendship bonds with the

fee paying groups but the sentiment is not reciprocated in most cases.

13. Tamo Chattopadhyay and Maya Roy, 2017, Low-Fee Private Schools in India: The Emerging Fault Lines¹²

This paper provides a critical perspective on the complex reality of private education for the poor, focusing on the Low-Fee Private schooling sector in India. It focuses on three 'fault lines', which if not addressed, will continue to undermine the ability of the LFP schooling sector to become a viable alternative to public schools that educate most of India's poor children. These three structural challenges are the threat to affordability in the face of current policies around school infrastructure and norms, unreliability of english-language education, the need for private tuition and added costs.

14. Geeta Kingdon, 2017, The private schooling phenomenon in India : A review¹³

This paper presents a critical commentary of the private schooling phenomenon in India. It throws light on the facts that the UDISE data is not completely accurate and Private School information not up to date in government records. It also mentions that despite efforts and policies, there are a lots of unrecognized schools currently running. It also claims that the per child cost of government schools has increased because of a shrinking population of students, which sometimes leads to closure of these schools. In particular, about the RTE 12(1)(c) policy, it raises ethical concerns with the lottery system of seat allocation. The focus of the paper is on policy making and taking into account the real landscape (here of private schooling) before creating policies.

¹⁰

https://www.indusaction.org/wp-content/uploads/2019/08/Indus-Action-_-Bright-Spots-Report-2018-1_compressed.pdf

¹¹ (n.d.). School choice in low- information environments - Azim Premji Retrieved September 25, 2019, from https://azimpremjiuniversity.edu.in/SitePages/pdf/SchoolCchoices_Web.pdf

¹² (2017, May 18). Low-Fee Private Schools in India: The Emerging Fault Lines. Retrieved September 26, 2019, from <https://ncspe.tc.columbia.edu/working-papers/WP233.pdf>

¹³ (n.d.). The Private Schooling Phenomenon in India: A Review - IZA. Retrieved September 25, 2019, from <http://ftp.iza.org/dp10612.pdf>



Maria lives in a rented accommodation with her parents and elder sister. She secured admission through RTE Section 12(1)(c) in Royal Blossom School, Thane with the help of work done by Tapasya Pratishtan. Her father works as a box maker in a shop and enrolling Maria in a good quality school was always an aspiration for him. He believes that through RTE 12(1)(c), he has been able to realise this aspiration, something that would have remained a distant dream otherwise, based on his financial situation. Maria is making the most of this opportunity by coming in first in class and actively participating in competitions and activities. Maria's father dreams of her becoming a senior officer after she completes her studies and becomes the most educated member of her family.

(Source - Tapas Sutradhar, Tapasya Pratishtan, Maharashtra)

15. State of the Nation: RTE Section 12(1)(c) – 2017

Building on the evidence that even after eight years of its enactment only 12 States/UTs have claimed funds for reimbursement to schools under Section 12(1)(c), the report notes that most of the states are yet to fulfil their obligations under the legislation or do so in a manner that can be understood as systematic. The report draws attention to the fact that delayed admissions processes associated with the provision, force parents to look elsewhere for admissions, or end up paying high fees to enroll their children in other private schools. Based on field based inquiries, the report argues for the need of targeted awareness campaigns. The report also compares the lottery algorithms across states and highlights inefficiencies that can limit chances of admission.

16. Rabiya Bazaz, Aligarh Muslim University, 2016, Right to Education: An Analysis of the Role of Private and Public Schools in Upholding Educational Rights of Marginalized Group¹⁴

This paper attempts to analyze the role of private and public schools in providing basic education to marginalised groups. It speaks of the fact that increasing inequality in the educational system has resulted in the violation of the right to education of most of the marginalized groups.

It introspect the participation of marginalized groups in elementary education and the role of government in enhancing their participation.

17. Indrajeet Dutta and Maisara Aziz Khan, 2016, Educational And Social Inclusion Of Children Admitted Under RTE Quota: A Survey Of Private Schools Of Bhopal¹⁵

¹⁴ (2016, June 2). Right to Education: An Analysis of the Role of Private and Retrieved September 26, 2019, from <http://article.sapub.org/10.5923.j.edu.20160602.03.html>

¹⁵ (n.d.). educational and social inclusion of children admitted under rte Retrieved September 26, 2019, from <https://www.semanticscholar.org/paper/EDUCATIONAL-AND-SOCIAL-INCLUSION-OF-CHILDREN-UNDER-Dutta-Khan/f68b96ade5759b3748a634fddd5eb684ae2fe945>

This paper presents the results of a project carried out in 10 schools in Bhopal, Madhya Pradesh. The results indicated that though there is social and educational inclusion of children in private schools, the students report that they have felt that the teachers do not feel that the path to achieving inclusion is a smooth one. Moreover, teachers still have a biased and unfavourable attitude towards these children. The gravity of the problem is not as big in the elite schools as they are not offering the EWS quota.

18. State of the Nation: RTE Section 12(1)(c) – 2015 (Provisional)

The report acknowledges several roadblocks that have marred the implementation of Section 12(1)(c), an innovative and far reaching provision, and presents administrative, legal and financial perspectives on it. It builds on the evaluative rubric from its previous edition and notes changes across states. The report offers suggestions on improving state rules, guidelines and notifications, raising awareness, defining the modes of applications, streamlining reimbursements, and makes the case for a structured grievance redressal and student tracking mechanism. The report also focuses on the role played by civil society in the implementation of the provision.

19. State of the Nation: RTE Section 12(1)(c), 2015

In this report, states have been evaluated based on a rubric of 21 criteria capturing structures critical for successful implementation. The report also analyses issues around the computation of per child recurring costs and reimbursements, examines the ambiguities, gaps and obstacles in the law and procedures of Section 12(1)(c). Primary field studies carried out in Rajasthan and Maharashtra are used to take a closer look at the implementation in these states and pose suggestions that could be replicated in other states. The report notes that

the provision has the potential to impact 1.6 crore children from EWS and DG categories over the next eight years.

20. Archana Mehendale, Rahul Mukhopadhyay, Annie Namala, 2015, Right to Education and Inclusion in Private Unaided Schools¹⁶

This paper describes the rules of the Section 12(1)(c) provision, and follows up with data from the cities of Bengaluru and Delhi. It also compares the two cities, and presents views on administrative structures and processes, inclusion in schools, grievance redressal and monitoring. Some of the emerging trends it touches upon are: scope of the provision, parental choice in school selection, emergence of parents as organized stakeholders, school networks, minority institutions, translation of legislative intent to practice, a deficit orientation towards 'RTE children' (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), teacher's role in inclusion, and sustainability of the provision. It also specifies certain policy implications and recommendations for the same, some of which are: an RTE cell in the education department, strong monitoring mechanisms by local authorities and the SCPCR, checks on providing recognition to schools, and scrutiny on fee structures, regular meetings with private schools to update and inform policies.

21. Padma M. Sarangapani, 2015, Institutional Diversity and Quality¹⁷

¹⁶ (2015, February 14). Right to Education and Inclusion in Private Unaided Schools Retrieved September 26, 2019, from

<https://www.epw.in/journal/2015/7/special-articles/right-education-and-inclusion-private-unaided-schools.html>

¹⁷ (n.d.). 1 Institutional Diversity and Quality Padma M. Sarangapani Dt Retrieved September 26, 2019, from <https://www.kcl.ac.uk/ecs/research/research-centres/cppr/research/currentpro/conducting-research-in-developing-countries/sarangapani-2016-institutional-diversity-and-qualit.y.pdf>

The paper presents an analysis of data that was gathered in a survey of all schools in one education block of the city of Hyderabad, Telangana. It tries to understand the factors that determine the quality of schools.

The six dimensions that enable a comprehensive understanding of quality when taken together include (i) aims and relevance (ii) provisioning (infrastructure and staffing), (iii) curriculum, (iv) pedagogy, (v) standards and outcomes and (vi) efficiency and accountability. The paper examines school diversity through the lens of aims and pedagogy. It also speaks of government, private aided and unaided schools, and similarities and differences in the management and functioning of these.

22. Anurag Kundu, Indus Action, 2015, 25% Full? A Report. Status of RTE Section 12(1)(c) in Delhi

This report, along with explaining the basics of Section 12(1)(c), spells out the responsibilities of governments towards an equitable society. It shows the different Vidhan Sabhas across the capital city of Delhi, ranking them in order of performance, linked to fill-rate and school participation rate under the policy. The report also highlights the role that different stakeholders like governments, elected representatives, schools, media, civil society, corporates, foundations, and active citizens can play in the successful implementation of the policy.

23. Nalini Juneja, 2014, India's New Mandate against Economic Apartheid in Schools¹⁸

Nalini Juneja's paper highlights the fact that private school enrolment represents over a third of the country's school-going population. It argues that the implementation of this clause could possibly enable the inclusion of almost a million children from disadvantaged and

¹⁸ (2019, May 17). India's New Mandate against Economic Apartheid in Schools. Retrieved September 23, 2019, from <https://www.semanticscholar.org/paper/India's-New-Mandate-against-Economic-Apartheid-in-Juneja/d968d4e28c015a0b7420daeead920a78bc66f0c2>

weaker sections into fee charging schools that would normally not have given them access. The paper speaks of the contentious nature of the policy as well as of social inclusion in India, and the role that the state, as well as the private schools play in this regard.

24. Ambrish Dongre, Avani Kapur, Vibhu Tewary, PAISA Report 2014, How much does India spend per student on elementary education?¹⁹

The PAISA report speaks of the change in spending, both public and private, in the space of Elementary Education (EE) in India. Especially referring to the RTE Act, it talks of the increasing dependency of the state governments on Government of India funds. (Accountability Initiative 2013; 2012). It further spells out the public and private spending for EE over the past few years, along with a methodology to calculate private expenditure in EE.

25. Arjun Malhotra, Shefalika & Dhriti Bhattacharya, 2014, Reimbursement of 25% : Focussed in Uttarakhand²⁰

This study aims to analyze the procedural discrepancies arising in the process of reimbursement of fee to school owners in Uttarakhand and the impact of the same on the financial as well as regulatory autonomy of the schools of the state. It also talks of the challenges and the role of the state in the same.

26. Padma M. Sarangapani, Archana Mehendale, Rahul Mukhopadhyay, Annie Namala, for Oxfam, 2014, Inclusion of Marginalised Children in Private Unaided Schools under The Right of Children to Free and

Compulsory Education Act, 2009. An Exploratory Study²¹

This research, conducted in the cities of Bengaluru and Delhi, captures the progress made with respect to the implementation of Section 12(1)(c). It reviews the rules and guidelines, administrative structures and processes, assesses the nature of inclusion in schools, and methods of grievance redressal in the system.

27. Indus Action and Central Square Foundation, 2014, Project Eklavya, Making Social Inclusion Possible within private, unaided, non-minority schools under Section 12(1)(c) of RTE

This research paper explains the basic premise of RTE 12(1)(c), why integration matters, and presents examples of both international and Indian laws on inclusion. It goes on to discuss the required pedagogies, mindset changes, and the role of leadership in teaching different groups of children while closely understanding poverty and how that affects a child. This paper also presents a case study of 7 schools as bright spots for inclusive learning in schools. The analysis is focused on 5 areas, namely, school specific information, activities undertaken for academic improvement, teacher characteristics and positive steps, community engagement, to increase inclusion, and special measures undertaken intentionally to ensure integration.

28. Indus Action and Central Square Foundation, 2014, Project Eklavya - Campaign 1.0 Report

This report presents the background and motivation for Section 12(1)(c), along with the implementation status in Delhi. It speaks of the challenges and possible solutions related to information dissemination, document proof, reimbursements, grievance redressal, centralized lottery system, communication

¹⁹ (n.d.). How Much Does India Spend Per Student on Elementary Retrieved September 23, 2019, from https://www.academia.edu/22992036/How_Much_Does_India_Spend_Per_Student_on_Elementary_Education

²⁰ (n.d.). Reimbursement Of 25%:Focussed in Uttarakhand. Retrieved September 26, 2019, from https://ccsinternship.files.wordpress.com/2014/06/331_group_reimbursement-of-25age-focussed-in-uttarakhand_arjun-dhriti-shefalika.pdf

²¹ (2014, March 15). Inclusion of Marginalized Children in Private Unaided Schools Retrieved September 25, 2019, from <https://policy-practice.oxfam.org.uk/publications/inclusion-of-marginalized-children-in-private-unaided-schools-the-rte-act-2009-346615>

between the DoE and MCD schools, among others.

29. Ankur Sarin and Swati Gupta, 2013, Quotas under RTE: Leading towards an egalitarian education system?²²

Sarin and Gupta touch upon the topic of an egalitarian education system, of providing an equality of opportunity. They speak of the resistance to the policy from the private schools and the impact it has had on the parent and child beneficiaries. The paper also stresses the importance of the responsibility of the school leaders, teachers and other actors, and its role in shaping the spirit of the policy.

30. Shailey Tucker and Gayatri Sahgal, AI Policy Briefs, 2012, 25% Reservation under the RTE: Unpacking the Rules in PAISA States

The paper showcases the fact that while the policy was rolled out by the Central government, there is a wide spectrum in the way it is implemented in different states. The authors cover the topics of maintaining student records and having a government body be specified for the same; area limits to school choice under the policy as in different states; the per child cost being reimbursed by the state government to the private schools and its revision; the spirit of the policy and discrimination in schools, entitlements to EWS children and clarity in rules, while referring specifically to the 6 states of Madhya Pradesh, Rajasthan, Himachal Pradesh, Bihar, Maharashtra, and Andhra Pradesh.

The literature around Section 12(1)(c) of the RTE Act, 2009, is extensive, as there are multiple angles with which one can look at the policy and understand its implementation and implications. While we acknowledge that the studies and papers that have been covered above, are not an exhaustive list of research on the subject, we hope to have presented existing literature around the major themes that have been in focus with respect to the policy.

²² (n.d.). Quotas under RTE: Leading towards an egalitarian education Retrieved September 22, 2019, from <https://ideas.repec.org/p/iim/iimawp/12132.html>



When Zeeshan, who hails from Shahjahanabad, got a lottery allotment for a school of his choice, his mother Shama Khan and father Afroz Khan could not contain the happiness on their faces. Mr. Khan said that even though they were financially constrained, he saw enrollment through this provision as means for his son to gain access to quality education and to grow up to serve the country by becoming an officer in the army.

(Source - Rachna Yadav, State Lead, Madhya Pradesh)

Part III : Relevance of Section 12(1)(c) vis a vis national and international obligations from human rights perspective

Obligations of State and Non-State Actors with respect to Right to Education – International context

“The social and economic evils in our world are all too real - as is the need to make globalization work for all the people of the world, by embedding the new global economy in a global society, based on shared global values of solidarity, social justice, and human rights. But these things cannot be achieved by violence. On the contrary, the hope of relieving world poverty will only diminish, if the world is polarized into mutually hostile camps of rich and poor, or North and South. The only route that offers any hope of a better future for all humanity is that of cooperation and partnership, in which all social forces - States, the private sector, institutions of learning and research, and civil society in all its forms - unite their efforts in the pursuit of specific, attainable goals.”²³

International Instruments that recognized right to free and compulsory education

*Right to Education is variously classified as an economic right, a social right and a cultural right. It is all of these. It is also, in many ways, a civil right and a political right, since it is central to the full and effective realization of those rights as well. In this respect, the right to education epitomizes the indivisibility and interdependence of all human rights.*²⁴

- Universal Declaration of Human Rights (1948, Article 26)

²³ (24 September 2001) Address by Secretary-General Kofi Annan to the United Nations General Assembly

²⁴ Committee On Economic, Social And Cultural Rights - General Comment 11 (1999) - Plans of action for primary education (article 14 of the International Covenant on Economic, Social and Cultural Rights)

- International Covenant on Economic, Social and Cultural Rights (1966, Articles 13 and 14)
- Convention on the Rights of the Child (1982, Article 28)
- Convention on the Elimination of All Forms of Discrimination against Women (1979, Article 10)
- Convention on the Rights of Persons with Disabilities (2006, Article 24)
- UNESCO Convention against Discrimination in Education (1960, Articles 4)
- ILO Worst Forms of Child Labour Convention (1999, Preamble, Articles 7 and 8)

In addition to the above, 17 Sustainable Development Goals (SDGs), also known as the Global Goals were adopted by all the United Nations Member States in 2015 as a universal call to action to end poverty, protect the planet and ensure that all people enjoy peace and prosperity by 2030.

Among these goals, SDG 4 is to “Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all”, and one of the targets for 2030 set for all Member States to achieve is to eliminate gender disparities in education and ensure equal access to all levels of education and vocational training for the vulnerable, including persons with disabilities, indigenous peoples and children in vulnerable situations.

Two keywords from SDG 4 are inclusion and equity which needs to be elaborated. Broadly, inclusion has been understood to be a process by which a school expands its resources to meet the learning needs, physical needs and emotional needs of all the children. Inclusive education may be the beginning of the change

needed to end exclusion, as it supports children, families and communities to recognise that people from different economic and/or social backgrounds or with disabilities have equal rights. In a background paper for the High Level Panel of Eminent Persons on Post-2015 Development Agenda, Professor Joshua Castellino observed that social inclusion is fundamental to the post-2015 development strategy - States, civil society, international organizations and the private sector need a collaborative (not antagonistic) approach in seeking active solutions to social exclusion.²⁵

Non-discrimination and equality are key human rights that apply to the right to education. The principles of equality and non-discrimination address one of the root causes of poverty. Poverty strategies target individuals and groups that are socially excluded, marginalized, vulnerable and disadvantaged.²⁶

States have the obligation to implement these principles at a national level. National laws can prohibit discrimination and create an environment enabling greater equity. Furthermore, affirmative action and promotional measures are often necessary in order to eliminate existing inequalities and disparities in education. Articles 15 to 18 of the Constitution of India and Section 12(1)(c) of the RTE Act, 2009, a national statutory law, are the positive obligations of the State to undo a history of discrimination on marginalized and vulnerable groups of the Indian society.

²⁵ UN SDSN Social Exclusion and Human Rights Paper for HLP

²⁶ [https://www.undp.org/content/dam/aplaws/publication/en/publications/democratic-governance/dg-publications-for-website/poverty-reduction-and-human-rights-practice-note/HRPN_\(poverty\)En.pdf](https://www.undp.org/content/dam/aplaws/publication/en/publications/democratic-governance/dg-publications-for-website/poverty-reduction-and-human-rights-practice-note/HRPN_(poverty)En.pdf)

The Eleventh Five Year Plan²⁷ document observes that there have been positive developments with respect to growth, but a "major weakness" of the economy is that "growth is not perceived as being sufficiently inclusive for many groups, especially Scheduled Castes (SCs), Scheduled Tribes (STs) and Minorities". The interconnections between ESC (Economic, Social, and Cultural) rights and CP (Civil and Political) rights illustrates the impact of the former on well-being in the short term and on equality in the longer term, in the document as follows -

...while in the short run, access to basic facilities, such as health, education, clean drinking water, etc., impacts directly on welfare, in the long run, it determines economic opportunities for the future. Without access to these services, one cannot be considered to have equality of opportunity.

In the international context, Section 12(1)(c) is perceived to be a form of voucher program. Few key policy aspects put in place by the Legislature addresses the vices observed globally in the implementation of voucher programmes.²⁸ Social mix of students in schools are ensured to reflect the societal demographics with controlled measures put in place in the legislation and executed by the local government.

1. **Conditional school-choice** : Residence-based school choice - within neighbourhood limits, and in cases of higher demand to particular schools, admissions are made on the basis of preferential lottery system designed and

²⁷ Planning Commission of India, 11th Five Year Plan (2007-2012), Inclusive Growth (Planning Commission, Government of India).

²⁸ UNESCO - Global Education Monitoring Report 2017/8: Accountability in education; and OECD (2019) Balancing School Choice and Equity: An International Perspective Based on PISA, PISA, OECD Publishing, Paris. <https://doi.org/10.1787/2592c974-en>

undertaken by the local government. This ensures that the most disadvantaged get priority based allotments.

2. *Targeted at the most disadvantaged families* : Section 12(1)(c) is for children belonging to economically and socially disadvantaged groups. Furthermore, the incidence of student-sorting across private and public schools is addressed by strictly applying no prior screening of students or parents on the lines of academic, economic or social status for securing admissions under this policy, under the RTE Act, 2009.
3. *No additional costs to be borne by the target beneficiaries* : Private schools are barred from collecting any additional fees from parents under this policy other than the government reimbursements under Section 12(2) of the RTE Act. Education by private actors is supposed to be considered as a not for profit occupation, allowing only reasonable surplus for improving the quality of education and school expansion.

Adoption of legislation to address discrimination is indispensable in complying with Article 2, paragraph 2²⁹ - *State parties are therefore encouraged to adopt specific legislation that prohibits discrimination in the field of economic, social and cultural rights. Such laws should aim at eliminating formal and substantive discrimination, attribute obligations to public and private actors and cover the prohibited grounds discussed above. Other laws should be regularly reviewed and, where necessary, amended in order to ensure that they do not discriminate or lead to discrimination, whether formally or substantively, in relation to*

²⁹ Article 2(2) of ICESCR: The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

the exercise and enjoyment of Covenant rights.
³⁰

On the State's affirmative action to create positive discrimination for social inclusion policy in education, and obligating non-State actors in achieving such objective, a reference can be made to the observations in ICESCR General Comments #13³¹ & 16³². The Article 13 (1) of ICESCR, adds to the declaration in three respects: education shall be directed to the human personality's "sense of dignity", it shall "enable all persons to participate effectively in a free society", and it shall promote understanding among all "ethnic" groups, as well as nations and racial and religious groups.
³³

The Committee with respect to SDG 4 (Quality education)³⁴ has identified main gaps undermining access to quality education by children, such as *poverty; discrimination; hidden costs of education; inaccessibility of schools, including for children with disabilities; school segregation that exacerbate existing disparities; insufficient incorporation of human rights education in school curricula and the training of education professionals; privatization of education, insufficient measures to ensure the compliance of private schools with minimum educational standards* etc. The committee has further observed that equity gaps continue to prevent children in disadvantaged or vulnerable

³⁰ Committee On Economic, Social And Cultural Rights Forty-second session Geneva, 4-22 May 2009 - General comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)

³¹ General Comment No. 13 (Twenty-first Session, 1999): Implementation Of The International Covenant On Economic, Social And Cultural Rights, The right to education (Article 13 of the Covenant)

³² Committee on the Rights of the Child: General comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights

³³ General Comment No. 13 (Twenty-first Session, 1999): Implementation Of The International Covenant On Economic, Social And Cultural Rights, The Right To Education (Article 13 Of The Covenant)

³⁴ Committee on the Rights of the Child (CRC) - Contribution to the 2030 Agenda for Sustainable Development in response to a call for inputs by the High-Level Political Forum on Sustainable Development (HLPF) 15 March 2019

situations from gaining access to quality education, including children with disabilities, children living in poverty, children in street situations, children living in rural or marginalized urban areas, migrant, asylum-seeking and internally displaced children, children from minority groups, children living in alternative care, children living with or affected by HIV/AIDS, and children in conflict with the law.

The Committee on the Rights of the Child (CRC) Contribution to the 2030 Agenda for Sustainable Development in response to a call for inputs by the High-Level Political Forum on Sustainable Development (HLPF) on 15 March, 2019 observed that multi-stakeholder partnerships at global, regional and national levels, that involve *public and private actors* as well as civil society, are key to achieving *inclusive, equitable and sustainable development* that respects, protects and fulfils the rights of the child.

Growing privatization with little to no regulatory mechanisms in place has led the international community to address the complexities involved in the functioning and interrelation between State and non-State actors with respect to education. After 3 years of consultative process by the secretariat made up of Amnesty International, the Equal Education Law Centre, the Global Initiative for Economic, Social, and Cultural Rights, the Initiative for Social and Economic Rights, and the Right to Education Initiative, the *Abidjan Principles*³⁵ on the human rights obligations of States to provide public education and to regulate private involvement in education was published on 21st March 2019 in Nairobi, Kenya. The Principles are hailed as a new landmark reference point in terms of understanding the right to education, providing crucial guidance to governments, education providers, human

rights practitioners, scholars and other stakeholders. The Principles are intended to directly inform education policies. Some of the leading cases on the role of State and non-State actors with respect to right to education observed by different constitutional courts of State Parties can be found in Appendix 1.

The observations made with respect to the provision of state funds to private schools in the effective implementation of the right to education for all, calls for transparent and fair regulatory mechanisms instituted in place to ensure that private schools are following the national law and are meeting the objective. Furthermore, it is also observed that the democratic consensus (through applicable representational form of governance) are to be formed before allocating state funds to private schools, and justified in the case of bridging the gap between the privileged and underprivileged communities of the society. The evolving jurisprudence in this segment can be observed, in the light of the observations made by different Constitutional Courts across the globe, to be converging towards the shared values principle, recognition of the human rights framework including non-State actors and its compliance towards child-centric rights-based approach.

[Obligations of non-state parties in fulfilment of Right to Education](#)

Since the start of this century, the global human rights network has found a new and common voice of shared values and understanding between State and non-State actors (NSAs³⁶), more so in the wake of the 2008 global economic crisis, climate change and global

³⁵ <https://www.abidjanprinciples.org/>

³⁶ The UN Committee on Economic Social and Cultural Rights (CESCR) has said that relevant NSA that may interfere with the enjoyment of ESR include “individuals, groups, corporations and other entities as well as agents acting under their authority.” See UN Committee on Economic, Social and Cultural Rights, General Comment No. 15, Right to water (2002)

warming, which further led to the SDGs. Since the last two decades, there has been a massive and unprecedented increase in the number of private providers of social services – such as education, health, or water – worldwide, a duty and obligation attributed primarily to State.

Under the international instruments, the duties and obligations are positively placed on State parties. However, India through the enactment of the *Right of Children to Free and Compulsory Education Act, 2009* has extended the human rights framework to be applicable on private actors in achieving elementary education for all by providing free, inclusive, and quality education. The statutory mandate was placed on private schools to accept 25% intake of children from disadvantaged groups under Section 12 of the Act, 2009. This came under challenge by private actors in the top court of the land, the Supreme Court of India, and the Court has affirmed that the authority of the State to fulfil its obligations under the right to education can be extended to private, non-State actors, and that the State has the authority to determine the manner in which it discharges this obligation. Although there is a right to establish private schools under Article 19, which guarantees the right to practise any profession, or to carry on any occupation, trade or business, the Court held that this right only exists where the school remains charitable and not for profit. Because establishing a private school under Article 19 supplements the primary obligation of the State, the Court held that the State can regulate private schools by imposing reasonable restrictions in the public interest under Article 19(6). The Court further concluded that the 25% quota imposed on private schools is in the public interest and is a reasonable restriction for the purposes of Article 19(6). Therefore, the 2009 Act was deemed to be constitutional and enforceable against private schools.

The State's human rights obligations are indispensable in providing elementary education. However there has been a rise of private schools across the globe, countries like Kenya have gone from 3% of private schools in 1999 to over 30% in 2011, while Morocco has tripled the share of private schools between 2000 and 2012. More and more detrimental impacts related to private involvement in social services on human rights have been documented in recent years, including growing discrimination and segregation, lack of transparency and accountability, misuse of resources, and corporate control over services that are essential for the development of open and fair societies³⁷.

On the 14th of September 2019, in response to civil society's mobilisation against growing privatization and commercialization of education, 57 heads of State and Governments of the Francophonie³⁸ raised concerns regarding the development of commercialisation³⁹ of education and reaffirmed their commitment in favour of public quality education. In a landmark common declaration, a group of 302 organisations from 38 countries of the Francophone area launched a *Call of the Francophone civil society against commercialisation of education*⁴⁰. "We are particularly concerned with chains of private schools with a commercial purpose[...]which promotes a low-quality and hyper-standardised education model", denounced Carole Coupez of Solidarité Laïque. "If Francophone countries have not yet been as affected by these chains of schools, it is important that they mobilise prior, and that they promote at the international level

³⁷ <https://www.gi-escr.org/private-actors-social-services>

³⁸ <https://www.francophonie.org/welcome-to-the-international.html>

³⁹ <https://www.gi-escr.org/private-actors-social-services/education/>

⁴⁰ Launch of the Call of the Francophone civil society against commercialisation of education — GI-ESCR

*another educational model that ensures social justice and the dignity of all.*⁴¹

The non-State actors, need to adhere to the standards set for all schools under the RTE Act, and the State needs to have stricter enforcement and regulatory practices. The lack of this is seen in the number of unregistered schools, which are minimally staffed and don't necessarily adhere to all set norms. This has an impact on the implementation of RTE overall. In the global scenario, this has captured attention because of the rise in the number of low-fee private schools, especially in developing countries.

Kishore Singh, Special Rapporteur on the right to education, observes that "The adverse effect of privatization and commercialization of education is diminishing universalization of education". Privatization of education denies education to poor people and those deprived of it. Entry to private institutions is not based on merit or eligibility; rather it is dependent on one's ability to pay a huge fee. This practice violates the UN Human Rights Resolution Treaty.

In India, through RTE Act, 2009 on the touchstone of the constitutional values and guiding principles of ensuring socio-economic justice and equality of status and of opportunity for all, as arbitrated and interpreted by the constitutional courts of the land, the participation of non-state actors in providing education is stated as a charity, a non-profit occupation, and shared obligation with the State. This has further been strengthened by different state legislations to regulate and fix fees to be charged by private schools so as to eliminate profiteering. The State has created and applied a rights-based approach to

education for all, but there exist gaps in the regulatory mechanisms, through which the right to education is not entirely free and does not necessarily follow a set standard for quality either. Though many have hailed the objective behind this inclusion policy, some have even advocated for increasing the quota to 50% and 100% thereby effectively making it as a common schooling system (since school choice is restricted to neighbourhood and dependent on draw of lots in case of increased demand), the lack of proper implementation and regulatory mechanisms has led to fewer outcomes.

The Draft National Education Policy, 2019, as detailed in the section below, has expressed a strong commitment by the government in the right direction to address many of these gaps. The progression for States envisaged in the international instruments (as also in Part-IV Directive Principles of the Constitution of India) with respect to Right to Education is to extend free, equitable, and quality education to pre-primary, secondary, and tertiary sectors. Though the Draft NEP, 2019 and the new integrated scheme for school education by the government under Samagra Shiksha Abhiyan, 2018 talks about integrating the schooling system from pre-primary to (senior) secondary (K-12 grades), making necessary amendments to the national legislation - the RTE Act, 2009 would ensure its effective and compulsory implementation, accountability, and also justiciability in the courts of law.

41

<https://www.gi-escr.org/latest-news/launch-of-the-call-of-the-francophone-civil-society-against-commercialisation-of-education/>

Part IV : Introduction to Diagnostic Framework

1. Sustainability Matrix

The Cambridge Dictionary defines 'sustainability' as the quality of being able to continue over a period of time.⁴² While sustainability has largely been associated with environmental factors, the 21st century has seen a shift in this definition, to include other dimensions of society like governance, economy and policies.⁴³ The diversity in the definitions of sustainability and its applicability across varied dimensions, has led to a difference in the indicators being defined for divergent topics.

In understanding the efficacy of Section 12(1)(c) of the RTE Act, 2009, Indus Action looks at certain indicators/metrics to gauge the implementation status of the provision. We have defined a benchmark, with respect to the implementation of the policy, based on quantitative and qualitative feedback from multiple stakeholders within the education system. The states implementing the policy, can self-diagnose themselves into Mature, Maturing, or Nascent states, based on these benchmarks (see Table 2.1, Chapter 2). To further expand the benchmarks into an actionable check-list, each of them are expanded into tangible activities that can help the state move from Nascent to Maturing to Mature.

The rationale behind choosing these factors for benchmarking is based on the consolidated learnings from the ground work that Indus Action has been involved in over the past 6

years, and the understanding gained from the ecosystem. There is a connection seen in the states that have been able to consistently progress on the multiple criteria, to have a more streamlined implementation system in place.

These metrics also tie into the recommendations of the Draft National Education Policy, 2019 with respect to improved implementation of Section 12(1)(c) of the RTE Act.

2. Recommendations of the Draft National Education Policy 2019

The Draft of the National Education Policy, 2019 (NEP)⁴⁴ was created with a vision towards a just and equitable society. It aligns with the Sustainable Development Goals, especially SDG4, which seeks to "ensure inclusive and equitable quality education and promote lifelong learning opportunities for all" by 2030.⁴⁵

The Draft NEP has laid out the following recommendations for effective implementation of RTE 12(1)(c):

- a. All private schools to fairly admit students from disadvantaged backgrounds.
- b. There should be a common IT-based platform for the admissions process, as existent in multiple states currently.
- c. The requisite funding should reach the state and thus the school on time.

⁴² (n.d.). SUSTAINABILITY - Cambridge Dictionary. Retrieved September 12, 2019, from <https://dictionary.cambridge.org/dictionary/english/sustainability>

⁴³ (n.d.). Sustainability Metrics - Research Program on Sustainability Retrieved September 12, 2019, from http://spm.ei.columbia.edu/files/2015/06/SPM_Metrics_WhitePaper_1.pdf

⁴⁴ (2018, December 15). Draft National Education Policy 2019 - Ministry of Human Retrieved September 12, 2019, from https://mhrd.gov.in/sites/upload_files/mhrd/files/Draft_NE_P_2019_EN_Revised.pdf

⁴⁵ (n.d.). Sustainable Development Goals ..: Sustainable Development Retrieved September 12, 2019, from <https://sustainabledevelopment.un.org/?menu=1300>

- d. There should be no overt or covert forms of discrimination in the school.
- e. Extra help/remedial instruction to be provided to students falling behind.
- f. A proper grievance redressal forum/channel should exist.
- g. Misuse related to mis-reporting of numbers, charging fees, discrimination in schools needs to be curbed.
- h. Mechanisms to ensure that schools do not misuse judicial exemption by claiming minority status when they do not cater to a minority population.

These recommendations in the Draft NEP focus on a more transparent and efficient implementation process. They can be tied in very closely with the sustainability matrix mentioned above.

The following chapters show the relation between the Sustainability Matrix (including benchmarks) and recommendations from the Draft NEP, 2019. Table 2.4 also showcases the current status of the different states. With an aim to present the current reality, and aspirational goals, we are not classifying states into any hierarchy or ranking system.

A close-up photograph of a diverse group of school children, mostly of South Asian descent, wearing light blue uniforms. They are smiling and waving their hands, creating a sense of joy and engagement. The image is partially obscured by a semi-transparent red rectangular overlay in the center, which contains the chapter title in white text.

CHAPTER 2: DIAGNOSTIC FRAMEWORKS AND STATE UPDATES

This chapter delves into the details of the policy implementation in different states, and provides implementational figures that explain the current scenarios in the states. The multiple tables and figures, throw light on the progress of different states, in both quantitative and qualitative aspects.

SUSTAINABILITY BENCHMARK			
Stage	Mature	Maturing	Nascent
1. Fill rate (%)	>50%	20-50%	<20%
2. School Participation Rate (%)	>75%	50-75%	<50%
3. Number of MIS modules (out of 7)	6 and above	2-5	0-2
4. Reimbursement Rate (%)	>75%	50-75%	<50%
5. Process Sustainability	High	Medium	Low

Table 2.1 : Sustainability Benchmark

The above mentioned sustainability benchmarks, can be broken down into smaller indicators. The checklist thus provides accessible goals, which in turn lead to the overarching goal of sustained and fair implementation of the policy.

Fill Rate : Ratio of the number of children who have gained admission through RTE 12(1)(c) to the number of seats that are available under the provision.

Influencing factors

1. Using government infrastructure as application centres
2. Awareness activities to ensure information dissemination to the beneficiaries

School Participation Rate : Ratio of the number of schools participating in the RTE 12(1)(c) admission process to the number of eligible private unaided schools as defined by the provision.

3. School Participation

MIS Modules :

4. Student Registration
5. School Registration
6. Admission Process
7. Lottery
8. Student Tracking
9. Reimbursement
10. Grievance Redressal with an escalation link to SCPCR
11. Number of years of operational online MIS process

Reimbursement Rate : Portion of funds that have been transferred from the State to the Schools and the ratio of funds approved by the Centre against the proposals submitted by the state

12. Reimbursement Online/Linkage with PFMS
13. Centre-State Reimbursements
14. State-School Reimbursements

Process Sustainability :

15. Clarity in Document requirements
16. Social Audit
17. Preferential Lottery logic
18. Accurate GIS Mapping of schools and applicant habitation mapping
19. Income cutoff to match minimum wage limits
20. Per-Child Cost Notification every year/standing committee
21. Applications/seat (Demand+Awareness)
22. Capacity Building of government machinery



Ishrat Mansuri works for women's issues in Mumbai, Thane. Due to recent strides in employment, women are given the training to work on sewing machines, teach mehndi design and computer training. After Ishrat got to know about RTE Section 12(1)(c), she was motivated to help all the women access their legislated rights. Ishrat Mansooriji started campaigning for RTE 12(1)(c) by giving information about the Act by talking to people and spreading the word on social media and through posters. She has single-handedly managed to reach out to nearly 3,000 people and fill out nearly 200 forms.

(Source - Tapas Sutradhar, Tapasya Pratishthan, Maharashtra)

RTE 12(1)(c) IMPLEMENTATION STATUS



Figure 2.1 : States that have notified their Per-child costs for Reimbursements

33

17

17

States/UTs have notified the disadvantaged groups and weaker sections which are eligible for admission in Private unaided Schools under Section 12(1)(c). Telangana is the only State which has not yet notified the disadvantaged groups and weaker sections. Section 12(1)(c) is effectively applicable to only 34 States/UT since Lakshadweep does not have any private unaided school and the RTE Act hasn't been extended to Jammu and Kashmir yet.

States/UTs are admitting children belonging to disadvantaged groups and weaker sections in private unaided schools under Section 12(1)(c) of the RTE Act, as per Annual Work Plan and Budget of the States and UTs (AWP&B 2019-20)

Assam, Bihar, Chandigarh, Chhattisgarh, Delhi, Gujarat, Himachal Pradesh, Jharkhand, Karnataka, Madhya Pradesh, Maharashtra, Odisha, Rajasthan, Tamil Nadu, Tripura, Uttar Pradesh and Uttarakhand, have notified the Per-child costs, that are a prerequisite for claiming reimbursements from the Centre, under Section 12(1)(c).

*via Parliamentary responses

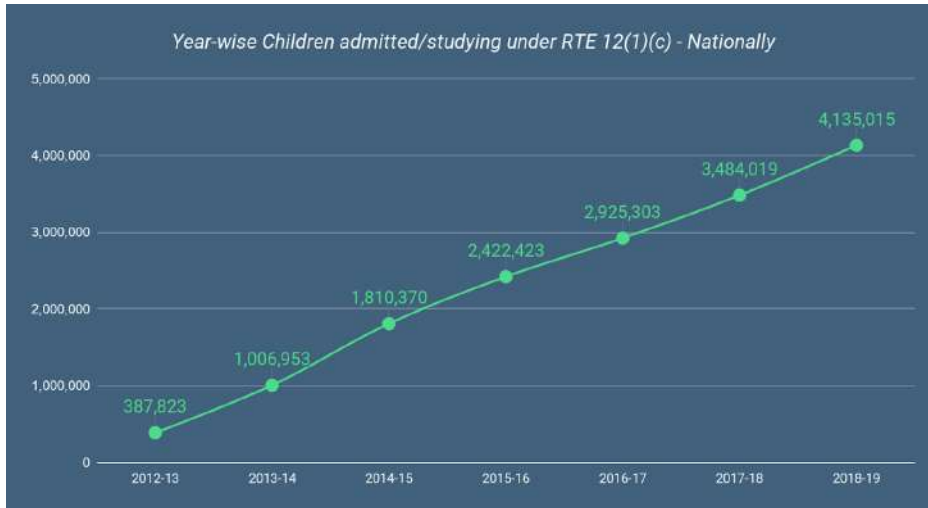


Figure 2.2 : Total number of children admitted/studying under Section 12(1)(c) of the RTE Act, nationally from 2012-13 to 2018-19⁴⁶

The number of children admitted/studying under the provision has crossed the 40 lakh mark in 2018-19.

The yearly increase in children admitted/studying under Section 12(1)(c) has plateaued to ~19% Year over Year since 2015-16.

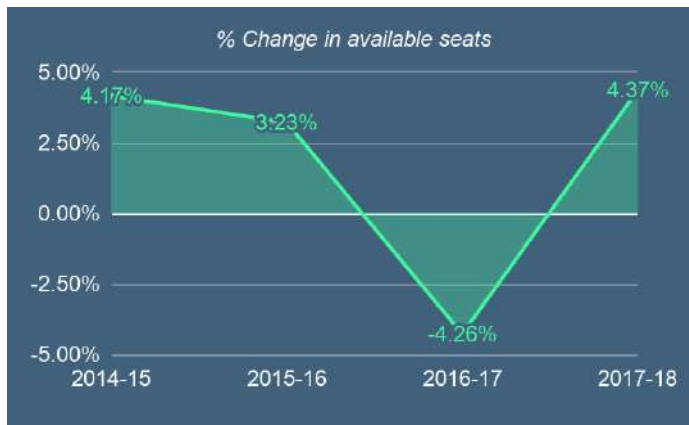


Figure 2.3 : Percentage change over the previous year in the potential number of Class 1 seats available under Section 12(1)(c)

22.7 lakh seats would have been available under the provision in 2017-18, as per Class 1 enrolments in Private unaided schools (UDISE 2013-14 to 2017-18)

⁴⁶Lok Sabha, Unstarred Question No:1474, Answered On:01.07.2019, "Examination of Right to Education", Retrieved from: <http://164.100.24.220/loksabhaquestions/annex/171/AU1474.pdf> and Table 2.5, State of the Nation: RTE Section 12(1)(c) - 2015 (Provisional), Retrieved from: [http://www.cprindia.org/sites/default/files/policy-briefs/State%20of%20the%20Nation-RTE%20Section12\(1\)\(c\)_2015%20\(Provisional\).pdf](http://www.cprindia.org/sites/default/files/policy-briefs/State%20of%20the%20Nation-RTE%20Section12(1)(c)_2015%20(Provisional).pdf)

Sl. No.	State	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19
1	Andaman & Nicobar Islands	233	233	394	540	725	1,017	0*
2	Assam	0	-	4,653	3,242	15,062	20,731	0*
3	Bihar	4,306	19,804	61,887	97,717	139,418	167,039	225,597
4	Chandigarh	672	1,530	2,145	2,825	3,487	3,915	4,597
5	Chhattisgarh	25,693	59,955	100,927	128,639	167,044	196,146	236,400
6	Delhi	20,440	-	33,201	49,043	51,254	124,605	158,242
7	Gujarat	0	449	13,033	41,586	83,734	141,365	215,820
8	Jharkhand	0	6,690	8,237	10,489	13,244	10,539	14,913
9	Karnataka	49,282	116,734	217,306	316,115	414,106	523,139	639,398
10	Madhya Pradesh	168,770	423,000	637,123	795,225	851,538	936,255	1,118,433
11	Maharashtra	0	38,025	65,719	104,945	142,112	197,044	254,351
12	Odisha	0	-	31,150	31,994	38,820	44,519	20,650
13	Rajasthan	100,002	238,811	436,070	555,966	600,666	622,271	675,907
14	Tamil Nadu	1,179	49,864	131,566	197,369	287,068	346,510	394,032
15	Uttar Pradesh	0	60	108	3,278	21,598	46,188	72,428
16	Uttarakhand	17,246	51,798	66,851	83,450	95,427	102,736	104,147
Total		387,823	1,006,953	1,810,370	2,422,423	2,925,303	3,484,019	4,135,015

Table 2.2 : Year-wise number of children studying under Section 12(1)(c), across states⁴⁷

*Data was awaited

68% of the children admitted/studying under Section 12(1)(c) are in the 4 states of Madhya Pradesh, Rajasthan, Karnataka and Tamil Nadu

⁴⁷Lok Sabha, Unstarred Question No:1474, Answered On:01.07.2019, "Examination of Right to Education", Retrieved from: <http://164.100.24.220/loksabhaquestions/annex/171/AU1474.pdf> and Table 2.5, State of the Nation: RTE Section 12(1)(c) - 2015 (Provisional), Retrieved from: [http://www.cprindia.org/sites/default/files/policy-briefs/State%20of%20the%20Nation-RTE%20Section12\(1\)\(c\)_2015%20\(Provisional\).pdf](http://www.cprindia.org/sites/default/files/policy-briefs/State%20of%20the%20Nation-RTE%20Section12(1)(c)_2015%20(Provisional).pdf)

Sl. No.	State	PAB 2015-16	PAB 2016-17	PAB 2017-18	PAB 2018-19	PAB 2019-20
		% Approved	% Approved	% Approved	% Approved	% Approved
1	Andaman & Nicobar Islands	-	-	0.00%	-	-
2	Bihar	0.00%	0.00%	0.00%	100.00%	-
3	Chandigarh	-	-	-	4.32%	-
4	Chhattisgarh	91.24%	89.52%	0.00%	47.56%	29.15%
5	Delhi	0.00%	23.94%	0.00%	-	54.51%
6	Gujarat	100.00%	100.00%	0.00%	66.45%	50.68%
7	Jharkhand	0.00%	0.00%	0.00%	82.41%	85.76%
8	Karnataka	77.11%	73.11%	48.07%	88.81%	NOT AVAILABLE
9	Madhya Pradesh	0.00%	19.37%	100.00%	52.36%	72.63%
10	Maharashtra	0.00%	10.16%	3.31%	32.71%	32.94%
11	Odisha	1.58%	100.00%	100.00%	100.00%	100.00%
12	Rajasthan	22.04%	59.68%	46.53%	100.00%	100.00%
13	Tamil Nadu	0.00%	0.05%	0.00%	27.98%	39.43%
14	Tripura	-	-	0.00%	-	-
15	Uttar Pradesh	100.00%	100.00%	0.00%	26.20%	61.98%
16	Uttarakhand	98.72%	0.00%	30.05%	94.29%	96.44%
Total		25.46%	26.59%	28.56%	57.53%	55.15%*

Table 2.3: Trends in Reimbursements received by the States from the Centre- an analysis of amounts proposed and approved

*excluding the amount approved for Karnataka, since the proposed amount was not available

- represents that no claim was made in that particular year by the state

The reimbursement from Central Government to the States and UTs has started from 2014-15 onwards.

The number of States receiving 50% or more of the proposed amount has increased in the 2018-19 and 2019-20 cycles. This indicates better adherence to the rules stipulated for claim approvals:

- Submission of receipts regarding State to school reimbursements
- Notification of Per-child costs in the state

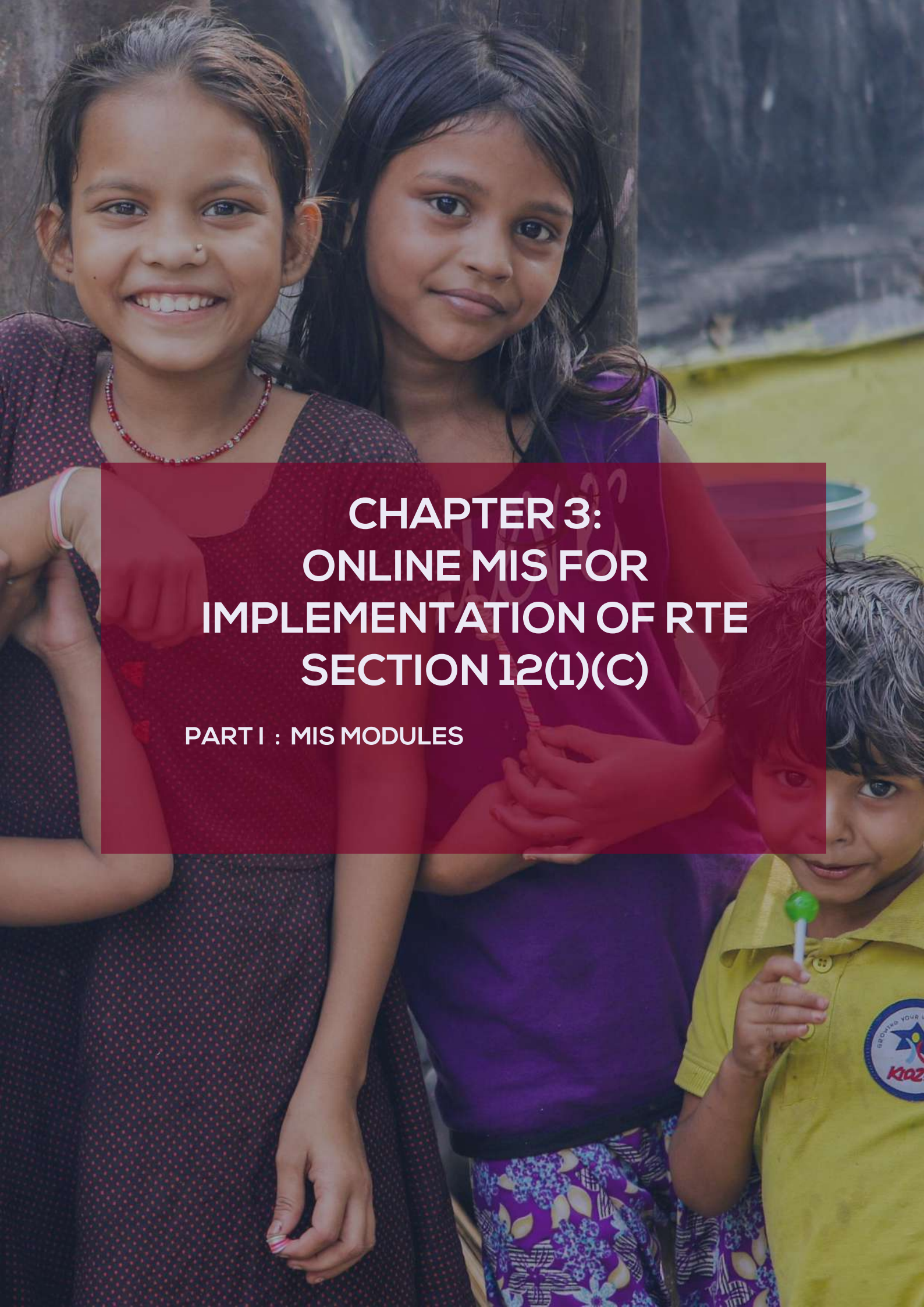
Sl. No.	States	Seats listed on portal	Admissions*	1. Fill Rate	Private Unaided Schools listed on UDISE, 2017-18	Schools listed on RTE portal	2. School Participation Rate^	3. Number of MIS modules (Out of 7)	4. Reimbursement Rate (PAB 2019-20)
1	Chhattisgarh	86,508	48,210	55.73%	6,708	6,348	94.63%	4	29.15%
2	Delhi	50,367	27,863	55.31%	2,682	1,868	69.65%	5	54.51%
3	Uttar Pradesh	262,603	NA	-	88,571	20,719	23.39%	3	61.98%
4	Maharashtra	116,809	78,824	67.48%	19,166	9,195	47.98%	5	32.94%
5	Rajasthan	NA	NA	-	35,936	34,581	96.23%	6	100.00%
6	Gujarat	115,849	NA	-	13,253	9,899	74.69%	4	50.68%
7	Madhya Pradesh	358,887	154,390	43.02%	28,103	27,839	99.06%	5	72.63%
8	Tamil Nadu	124,113	NA	-	11,863	8,938	75.34%	2	39.43%
9	Karnataka	17,718	4,701	26.53%	19,645	2,489	12.67%	5	NA
10	Uttarakhand	10,596	2,405	22.70%	2187	1,314	60.08%	5	96.44%

Table 2.4 : Fill Rate, School Participation Rate and Reimbursement Rate across select states

*Tentative, admissions were progressing in the states, at the time of compilation

^Indicative

-Information obtained via state RTE portals



CHAPTER 3: ONLINE MIS FOR IMPLEMENTATION OF RTE SECTION 12(1)(C)

PART I : MIS MODULES

The Management Information System or MIS, is a computer-based system, which helps to store and process data to make day to day working more efficient and information-driven for State Education Departments. The MIS proposed by Indus Action and built in different states, for Section 12(1)(c), contains different modules. Each of them serves a different purpose in the overall life cycle of the policy. The aim is to make the application, admission, and monitoring processes easier, less time consuming, more transparent, and to have an efficient platform for data collection.

Part I : MIS Modules

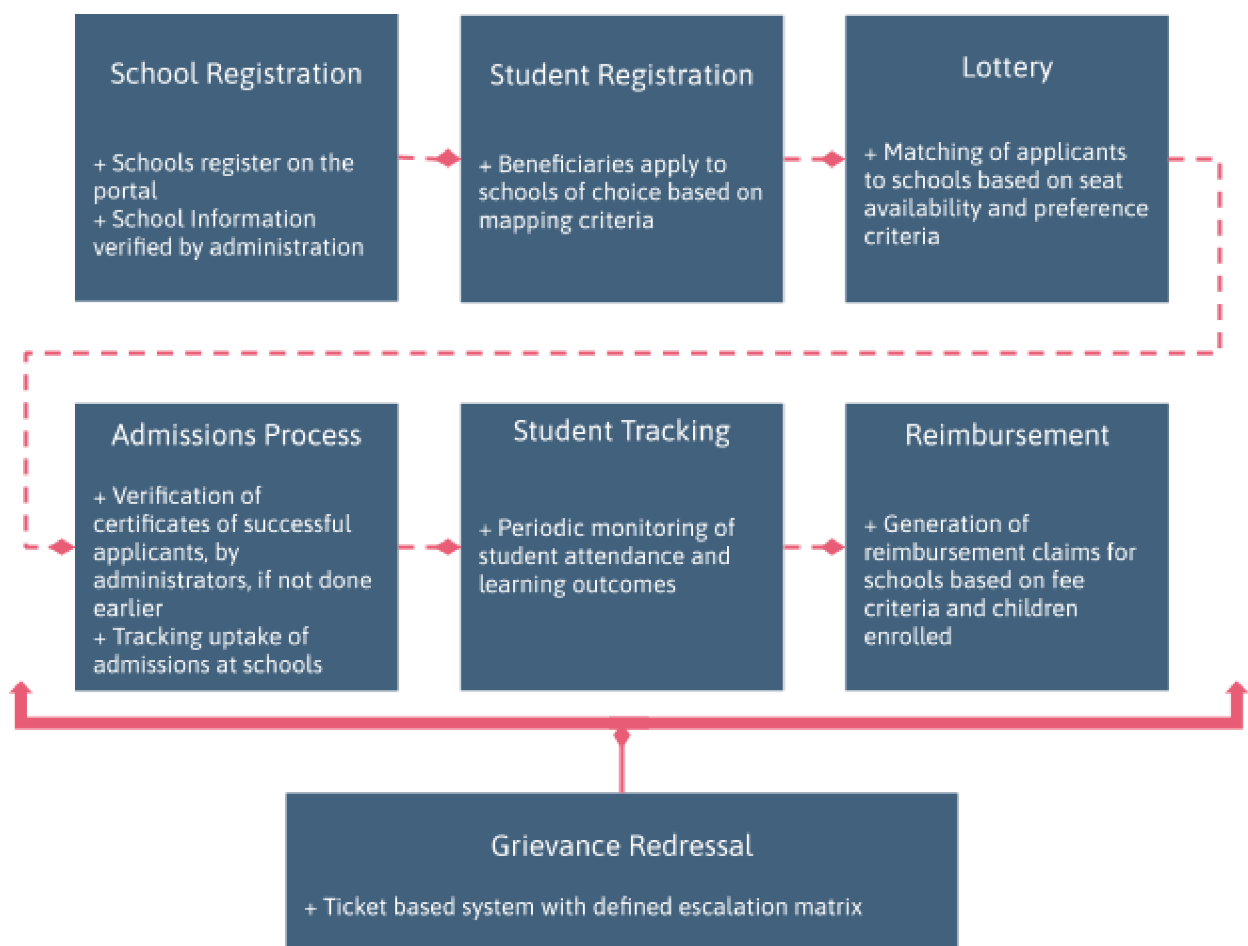


Figure 3.1 : Model MIS System

1. School Registration : This module helps bring all the schools onto the MIS platform. It shows the beneficiaries the seats and fees information of all schools in their neighbourhood.

2. Student Registration : Parents/caregivers of eligible children apply for admission to listed schools based on neighborhood criteria.

3. Lottery : Online lottery is applicable for schools where the number of applications is more than the number of seats. The lottery algorithm decided by the state government matches student applications to school seats. Lottery can be done in a preferential order as well, giving preference to the more vulnerable groups among the disadvantaged.

4. Admission/Enrollment Process : This module enables the nodal officers to review documents and approve the application for any further stage. It is also helpful for the private schools to declare whether the student is studying in school or has dropped out.

5. Reimbursement : This module of the MIS, helps generate a report of reimbursement amounts for each school based on the number of children studying under RTE 12(1)(c) subject to the reimbursement rules of the state. It can also show the funds transferred from centre to state, state to district, and district to school.

6. Student Tracking : This refers to the tracking of student information with respect to attendance and learning outcomes. It is helpful to understand the actual situation in schools, pertaining to the impact of the policy, and to also capture drop-outs in the system.

7. Grievance Redressal : This module will create an efficient, ticket-based system to address the issues faced by different stakeholders in the implementation of the policy, which include the beneficiaries, schools, and government officials at different levels. It can also help link the complaints to the appellate authority for child rights mentioned in the RTE Act, namely, the SCPCR.



CHAPTER 4: ENROLLMENT PROCESS

PART I : SCHOOL CHOICE
PART II : LOTTERY LOGIC

With the current mechanism for school selection in the RTE Section 12(1)(c) online process, an applicant takes roughly 10-15 minutes to fill in ordered school preferences. Based on the school mapping mechanism adopted by the state, an applicant may see upto 2,000 schools in their preference list (a list they are unlikely to have access to prior to actually filling in the application form). Based on what they are looking for in a school, they would need to scan through at least 5-6 key data points for each school in this list. Ideally, applicants would also need to be aware of the intricacies of the policy, like neighborhood criteria and lottery logic, to be able to make optimised choices.

Part I : School Choice - the User Experience

This section discusses some key considerations involved in transitioning the process of school selection online. User Experience (UX) improvements in this part of the process could have a major impact on the streamlining of the entire RTE 12(1)(c) process - better informed school selection leading to increased applicant satisfaction, which could lead to increased seat fill rates and reduced post-lottery and post-admission drop-outs.

Methodology

The insights in this chapter come primarily from three sources:

1. A focus group of 6 Community Champions from Delhi who filled RTE 12(1)(c) forms on behalf of parents in the 2019-20 admissions cycle.
2. A telephonic survey of the parents/guardians of 1213 applicants across 4 states - 277 in Delhi, 353 in Chhattisgarh, 319 in Uttarakhand and 263 in Haryana.
3. Analysis of de-identified data from the MIS portal of states like Chhattisgarh and Haryana.

Steps Involved

The online school selection process essentially involves the following steps:

1. **Choosing the appropriate input for populating one's nearby school list** - based on the school mapping logic implemented in the state this could be a GIS location or a ward or locality selection input.
2. **Selecting one or more schools based on the displayed information** - this would involve processing a number of important data points and making choices based on these data points.
3. **Ranking school choices** - In case more than one school is selected, this involves arriving at an ordered list of schools.
4. **Reviewing and submitting one's choices** - if possible.

Three additional factors are also relevant to this context:

- **The need for enablers** - Most applicants do not fill in these online forms themselves and depend on a set of enablers to help them navigate the online process. Surveys

carried out among last years' applicants in 4 states indicate that over 87% of applicants were not filling in these online forms themselves - most were dependent on cyber cafes (73.78%). Incentives for the enablers may not align with those of the applicants, as they may receive a fixed fee irrespective of the number and type of choices made.

- **Time constraints** - Over 80% of the applicants we surveyed reported spending less than 15 minutes in filling their forms.
- **Costs** - the significant costs (in excess of ₹700 in some cases) involved in getting an online form filled may discourage repeat trips to make corrections and adjustments, even when such options are made available to applicants.

Step 1: Arriving at the School List

The fetching of an appropriate school list depends on accurate mapping of schools to locations (this could be wards or localities or geo-locations depending on the process followed in the state) and the correct choice of this location (henceforth termed the **listing determinant**) by the applicant while filling the form. A number of other factors complicate this process further:

- **Unavailability of a categorised school list** - amongst the states surveyed as a part of this study, we only found one instance of a state making its entire school list (categorised by location) public prior to the start of the application process. As a consequence, most applicants get access to the school list only at the time of making the application. Our surveys indicate that close to 87% of the applicants rely on anecdotal evidence shared by friends and family members to define their

school choices, 43% respondents reported that they were unable to find some or all of the schools they wished to apply to and over 50% reported that their children ended up being allotted into schools which they had not heard of prior to the application process.

- **Range of choices available** - There is wide disparity in the school neighborhood mapping criteria across states- increasing the size of the extended neighbourhood increases school options for applicants and may increase seat fill rates, while a smaller geographical criteria allows for most optimal choices for applicants (based on distance considerations) and reduces chances of dropouts during or after the admission process. The states surveyed had neighbourhood criteria ranging from a 1.5 km (aerial) radius at the lower end to the entire state at the higher end. For example, in Uttarakhand, where the school list radius was 3 kms, 53% of applicants were able to find all the schools of their choice, compared to 73% in Delhi, where there was no neighbourhood limitation in the choice of schools. At the same time, the increased radius led to an increase in the number of post-allotment grievances in Haryana⁵⁰, with an estimated 20-25% candidates not taking up their first allotted school citing distance as a grievance.
- **The maximum number of choices that the applicant can actually fill** - On this too, a balance needs to be established. Too few choices (less than 3) effectively nullify the benefit of an online process, as parents were able to cover 2-3 schools even when the process was offline. Too many choices may encourage non-optimal choices as

⁵⁰ Applicants surveyed in Haryana were those who had applied for admissions under Section 134-A, a state scheme that enables meritorious children to study in a private school through a state scholarship

Insights from the Admissions cycle in Karnataka

For the 2019-20 cycle, the Karnataka government had made it non-mandatory for private unaided schools to admit economically-backward students if there are government or aided schools in the same locality. This led to an 88% reduction in the number of seats available, reducing from 1.52 lakh seats that was available last year, to 17,718 this year. Applications for seats witnessed a 92.7% drop as well.

- Of the seats listed for applications, 92.6% were for Class 1 and 7.3% were for LKG.
- 81.32% of all LKG seats (58.70% in private aided and 83.04% in private unaided) had admissions.
- Only 22.18% of all Class 1 seats had admissions, with the highest admissions in English medium Private Aided and Unaided schools (66.86% and 57.76% respectively). This was closely followed by 54.42% admissions in Kannada-medium Private Unaided schools

*Information via state RTE portal

Insights from the Admissions cycle in Uttarakhand

Uttarakhand has an online process in the districts of Dehradun, Chamoli and Haridwar. These districts constitute around 50% of the total seats in the state. The below analysis is based on the admissions process in these 3 districts.

- There was close to a 50-50 split between English and Hindi medium schools available for admissions. 87.5% of the schools had listed Class 1 as their entry class while the remainder of classes accepted children for their pre-primary class.
- 54.5% of all applicants made single-choice applications, having selected only one school in their applications. 94.6% of applicants recorded 5 or fewer choices.
- 75% of choices made by all applicants were for schools that were English-medium.
- Amongst the 24% of schools that did not receive an application, 73% were Hindi-medium
- 80% of all school choices registered were for 26% of the schools that were listed.

*information via state12(1)(c) MIS

applicants may choose a greater number of schools in the application but may eventually decide against going to a low preference school post allotment.

- **Organisation of schools in the list** - User experience research has pointed to an effect known as the **'serial position effect'** which explains how items that are presented at the beginning or end of a list tend to have more recall value than the items in the middle. The organisation of schools within the list thus affects which schools are selected and the preference order they are assigned. Ordering the list by distance (provided there is confidence in the accuracy of school mapping) or staggering the list based on distance radii (which can overcome minor errors in mapping) are solutions adopted by states to mitigate this effect.
- **Applicants' and enablers' understanding of the listing determinant** - fetching of the school list generally depends on the correct selection of one particular field (locality or geocode) which activates the neighbourhood mapping logic. Often, making the right choice involves navigating a complex interface, like placing a pin on a map or choosing from a list of overlapping localities. Apart from this, it is often not possible for one to change their choice of the listing determinant after moving on to the school selection section of the application form. Our focus group with RTE 12(1)(c) Community Champions in Delhi has pointed to this as one of the primary reasons for applicants not being able to make optimal choices of schools this year.

[Step 2: Determinants of School Choice](#)

Distance & Transportation Options

Distance and ease of commute emerged as the first (86%) and third choice (27%) of our survey respondents when they were asked about factors that influences their choice of schools. Given that distance is an objective measure, as long as the location of the school and the applicant are known within a reasonable degree of certainty, it is fairly easy to display the school list sorted or categorised by distance. Making the correct information available to the parent is thus directly linked to the accuracy of the school mapping process and the correct choice of the listing determinant. The only contention beyond this point is whether aerial or linear distances are to be used for measurements in the GIS-based implementation, with most states adopting aerial distances, due to its greater reliability.

Perceived Quality

Notwithstanding differences between applicants' perceived levels and the actual levels of quality of schools, proxies for school quality (such as "Quality of learning in the school is good", "School is famous", "School has good results") figured prominently as reasons for choosing schools in our survey of applicants. Given that the definition of quality in the minds of applicants is ambiguous and the information that they do gather is mostly anecdotal, there is a challenge of effectively representing determinants of school quality in the online school list.

Our focus group in Delhi pointed to slightly more measurable determinants such as frequency of testing, test evaluations and parent-teacher interactions as data points that could give more clarity to applicants about quality. In addition to this, there is little or no centralised repository of information regarding

historical performance of schools with respect to admitting and retaining RTE 12(1)(c) students that an applicant has access to. Given that a number of states collect attendance and marks of admitted EWS students, states should consider making public, indicators around these inputs to inform better school choice. The focus group also expressed a clear intent on the part of parents to select schools that can be seen as high-fee schools. Fee details are generally not publically available on portals and hence this decision-making can be based on the information that the applicants already possessed.

Infrastructure

While school infrastructure is also one of the factors that applicants pay keen attention when applying to private schools, it is difficult to provide an accurate representation of a school's infrastructure using a limited set of data points. For instance, Odisha collects 20 data points on infrastructure from all private schools for public display - this includes classroom size, library facilities, water supply, toilets, safety equipment and disability access information. It is certainly difficult to expect applicants to navigate through all these data points for all the schools that are available to them. Infrastructure considerations, however, were a key determinant of school choice for applicants of Children with Special Needs, as reported by our focus group in Delhi.

Medium of Instruction, Board, Classes Upto, School Type

These 4 data points have turned out to be key to the school choice process in every RTE 12(1)(c) state, but not in the same way as distance, quality and infrastructure have. Interestingly enough, our surveys do not list any of these as amongst data points that applicants look out for when choosing schools for their

children. This, in part, occurs due to inaccurate assumptions about private schools - our focus group in Delhi reported that applicants assume all listed private schools would be English-medium, CBSE Board and provide free education to their children till Class 8. The real importance of these data points comes to light only after lottery allotment, when a large number of grievances reported by applicants were because of a mismatch between their expected Medium/Board/School Type and the actual allotment. For instance, the Section 134A process in Haryana recorded over 400 grievances owing to wrong Board or Medium allocations, while in Delhi, the Municipal Corporation of Delhi schools (which have classes only up to 5) reported a higher drop in application to admitted figures than the other schools which went up to Class 8, as reported by the community volunteers in our focus group interaction.

Broadly, these 4 data points could thus be classified as **'filtering'** criteria instead of **'choosing'** criteria - in that applicants may want to filter out particular types of schools based on these data points and not necessarily choose schools solely because of these factors.

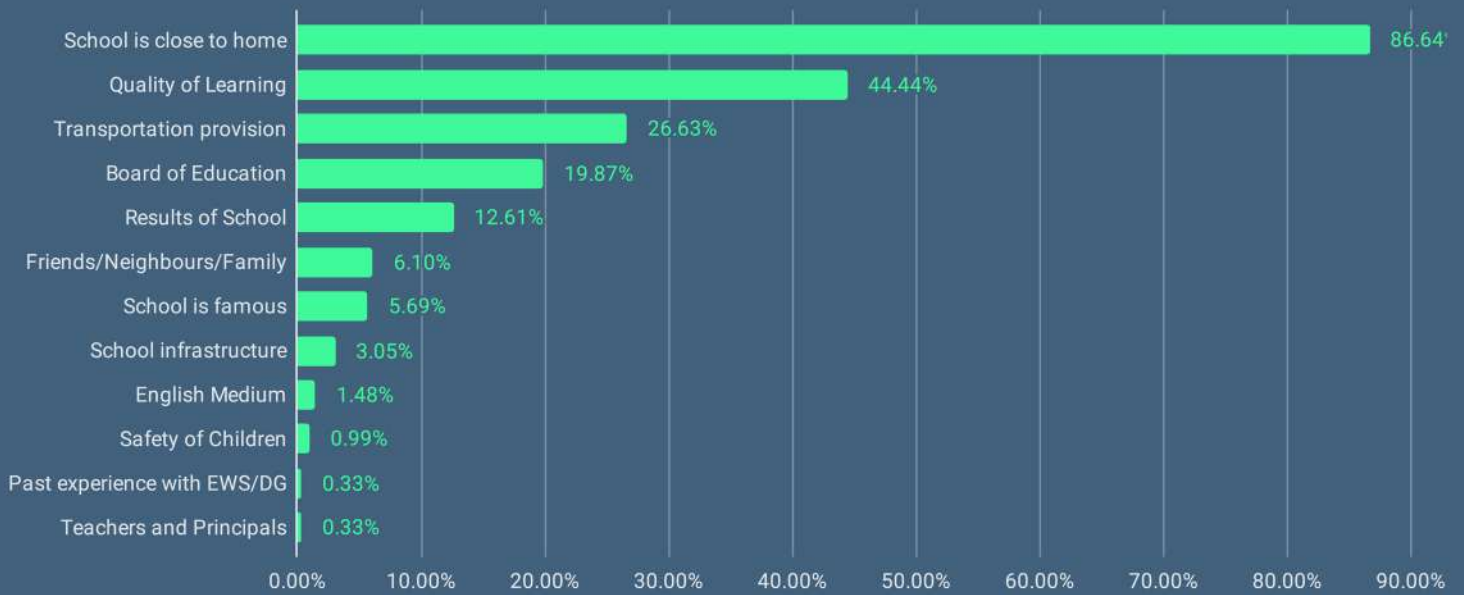
Entry Class

Similar to the 4 data points mentioned above, entry class is also a key criteria for the filtering of schools. A study by the NCPDR⁵¹ pointed to trends that show a high preference among EWS/DG applicants for schools having entry level class as pre-primary, as it is believed they do not have the resources to make up for pre-primary education. Fortunately, most states

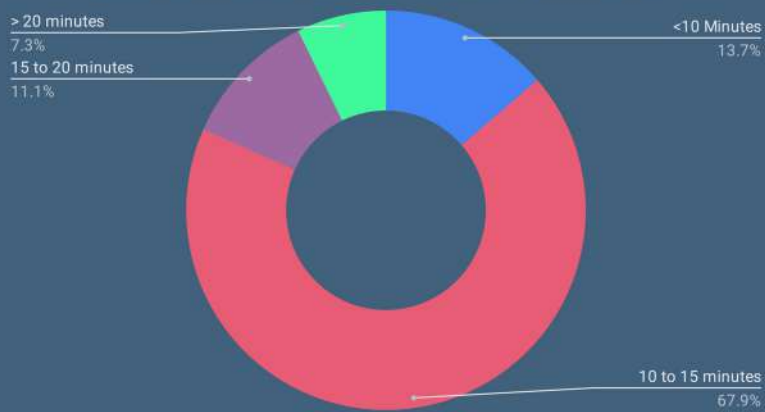
⁵¹ National Commission for Protection of Child Rights. 2018. A Study on Implementation of Section 12(1) (c) of RTE Act, 2009 in Delhi pertaining to Admission of Children from Disadvantaged Sections in Private Schools. Delhi: NCPDR.

Figures 4.1 - 4.4

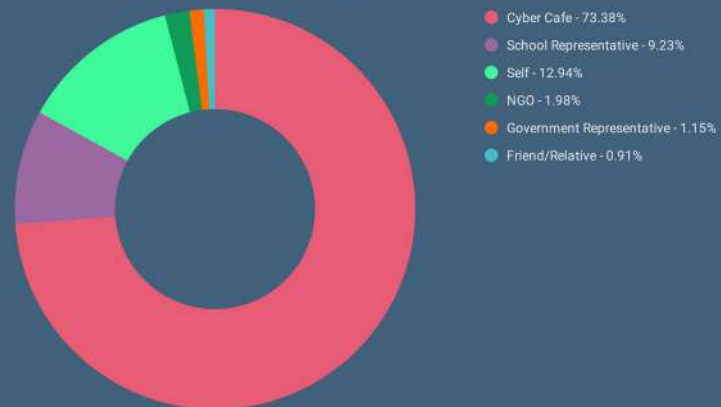
Q: What were the factors that affected the choice of schools? (Multiple-choices)



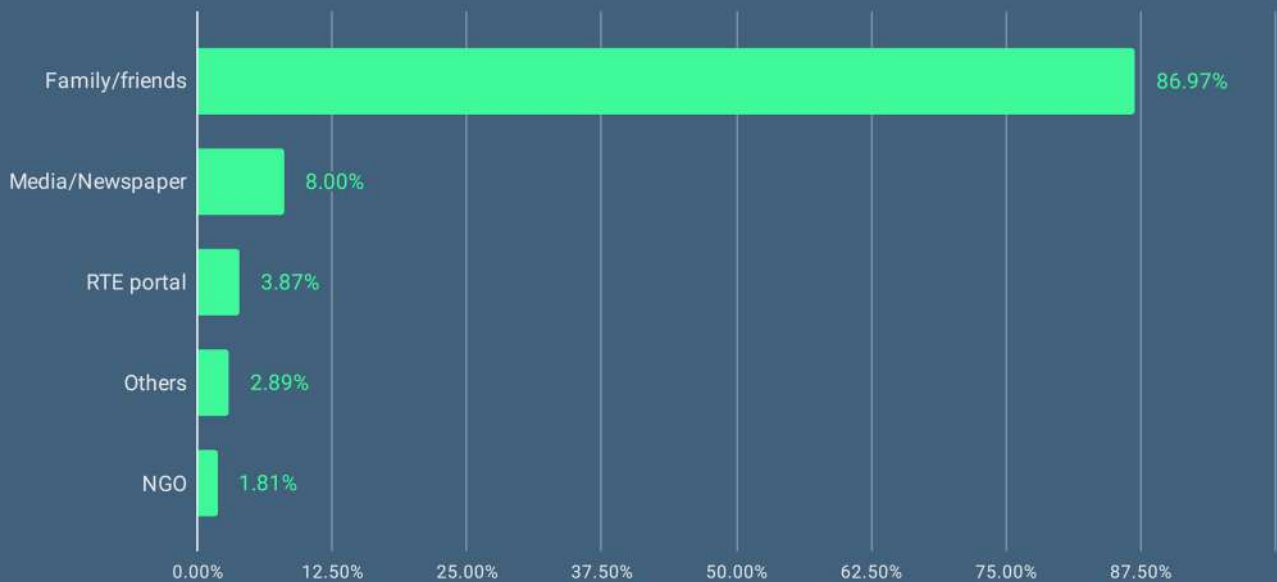
Q: How much time did it take to fill the application form?



Q: Who filled the application form?



Source of information (Multiple-choices)



have entry class requirements restricted by age and once applicants fill in their Date of Birth and choice of entry class (if more than one entry class is available for that age in the state), their school list automatically gets filtered.

[The ordering of preferences](#)

When it comes to the ordering of preferences amongst the list of chosen schools, a number of considerations need to be taken into account when designing the right interface:

How many schools has the applicant actually applied to

- Ordering choices is required when the applicant has chosen more than one school. Evidence suggests that the number of schools that applicants actually apply to vary by state, and that the average number of choices filled increase steadily as the online application process in the state matures over the years. For example, Chhattisgarh (currently in its 2nd online application cycle) had over 66% of its applicant filling in only one choice compared to Delhi which had an average of over 14 choices per applicant in 2016-17. This variation can be explained by a number of factors, including, the lack of awareness among applicants about the fact that multiple options can be filled, expectations that the online process is similar to the offline process where applicants applied directly to a single school, lack of incentive on the part of cyber cafes to fill in more application choices, and issues in the mapping logic leading to fewer options being available to applicants.

The selection and ranking interface - The design of the Selection and Ranking UI may encourage sub-optimal choices from the applicants, particularly if the processes of selection and ranking are done in two separate pages.

The preference ranking interface in the Delhi MIS requires applicants to navigate a long list of

options, choose schools with a button on the side of the menu and then scroll down to see which options they have chosen. Each time a school is selected, the page reloads and the user is sent back to the top of the page. In this case, if the applicant is reading the list from top to bottom, their natural inclination is to choose schools in the same order (top to bottom). There is no reordering mechanism apart from deleting choices and adding them again in the right order.

The preference ranking interface used in the Chhattisgarh MIS requires applicants to manually assign a preference number to each school they apply to. This encourages them to deliberately think about their preference order after they have determined their choices.

Strategies for maximising allotment chances

- If the lottery algorithm followed in the state is not strategy-proof⁵², applicants may feel the need to organise their choices in a way that maximises their chances of getting an allotment. This means that instead of ranking all their choices in order of preference, applicants may decide to give a higher ranking to schools that they believe would be easier to get a lottery in. Our focus group in Delhi also requested for a live application count for each school, so that they could make “optimal” choices on behalf of the applicants they were filling applications on behalf of.

⁵² An allocation algorithm is said to be strategy proof if it is always in the applicant’s best interest to rank their choices truthfully, that is, ordering schools based purely on their preference of one over the other without having to take into account the relative probability of achieving lottery success in the said schools

INFORMATION FOR PARENTS/SCHOOL TEACHERS FOR THE SELECTION OF SCHOOLS
DEPARTMENT OF EDUCATION, GOVERNMENT OF DELHI

Welcome (RAV1-2537000027)

[Home](#) | [Choice of Schools \(0-1 km\)](#) | [Choice of Schools \(1-3 km\)](#) | [Choice of Schools \(3-6 km\)](#) | [Choice of Schools \(6-9 km\)](#) | [Choice of Schools \(9-12 km\)](#) | [Final Submission & Print](#) | [Logout](#)

Choice of Schools (वियाम के विकल्प) (0-1 km)

Class (कक्षा):
 Locality (स्थान):
 Sub Locality (उप-स्थान):

Sub-Sub Locality (उप-उप-स्थान):
 Distance Range (दूरी के सीमा):

School ID (वियाम आई डी)	School Name (वियाम का नाम)	Vacant Seats (खाली बेंचियाँ) -	Assign Priority (सबसे कम प्राथमिकता)
154080	GURU NANAK DAS PUBLIC SCHOOL, 03 BLOCK, TILAK NAGAR, NEW DELHI-110028	20	<input type="button" value="Add"/>
154413	SANT NARAYAN PUBLIC SCHOOL, 03 Block, Tilak Nagar, New Delhi-110028	10	<input type="button" value="Add"/>
102225	Bharti Vidya Niketan PUSA-Block H, Vihar, Chandu Vihar, Delhi-110014	15	<input type="button" value="Add"/>
102280	Bhri Memorial School, Vikas Puri, New Delhi	20	<input type="button" value="Add"/>
102483	HANSA MODERNISH SEC SCHOOL, VIKAS PURI, NEW DELHI	25	<input type="button" value="Add"/>
102528	SRINAGAR WORLD SCHOOL, 1-1, NCTM Vihar, New Delhi-110014	49	<input type="button" value="Add"/>
104612	PRINCEVA PUBLIC SECONDARY SCHOOL, 03 BLOCK, VIKAS PURI, NEW DELHI	43	<input type="button" value="Add"/>
102834	ST. PETER CONVENT SCHOOL, VIKAS PURI, NEW DELHI	23	<input type="button" value="Add"/>
102844	CONCORD SENIOR SECONDARY SCHOOL, 03 BLOCK, VIKAS PURI, NEW DELHI-110028	49	<input type="button" value="Add"/>

*Note:- The vacancies are subject to change depending on actual General Category admission in a particular Schools.

Priority No. (सबसे कम प्राथमिकता)	School ID (वियाम आई डी)	School Name (वियाम का नाम)	Remove (हटाने)
1	154080	GURU NANAK DAS PUBLIC SCHOOL, 03 BLOCK, TILAK NAGAR, NEW DELHI-110028	<input type="button" value="Delete"/>
2	154413	SANT NARAYAN PUBLIC SCHOOL, 03 Block, Tilak Nagar, New Delhi-110028	<input type="button" value="Delete"/>
3	102225	Bharti Vidya Niketan PUSA-Block H, Vihar, Chandu Vihar, Delhi-110014	<input type="button" value="Delete"/>
4	102280	SRINAGAR WORLD SCHOOL, 1-1, NCTM Vihar, New Delhi-110014	<input type="button" value="Delete"/>

Figure 4.5 : School selection panel in the Online MIS in Delhi⁵³

⁵³ http://edustud.nic.in/mis/studentadmission/Instructionsbi-lingual%20_new%2021012018.pdf

आपके द्वारा चुने गये मोहल्ला / ग्रामपंचायत में कुल 2 स्कूल प्राप्त हुये

यदि आपको वांछित स्कूल प्रदर्शित नहीं हो रही है जो आपके तर्क से आपके मोहल्ला / ग्रामपंचायत में हैं/हो सकता है, तो [यहाँ क्लिक करके](#) कृपया सूचित करें !

नोट: स्कूल जो दो कक्षाओं में जो स्कूल रजिस्टर्ड हैं, उनमें कक्षा 1 में कुल सीट एवं RTE सीट, नर्सरी या केजी-1 की सीटों की संख्या को, कुछ जगहों पर, मिला कर दिखाया गया है, स्कूल पंजीयन में संभ्रम के कारण। अतः सीटों की संख्या कम हो सकती है। इसमें अगले सत्र में सुधार कर दिया जाएगा, इस सत्र में सुधार संभव नहीं है।

नोट: जिन हैवीटेशन या मोहल्लों में किसी भी स्कूल की मैपिंग नहीं हुई है, वहाँ संबंधित वार्ड में उपस्थित स्कूलों की सूची दिखाई देगी।

SN	स्कूल का नाम	RTE सीट का विवरण	चुनें	प्राथमिकता				
1	UDISE Code : 22112200717 PVT. MOTHERS PRIDE ENGLISH MEDIUM SCHOOL ARANG Address: Kaithapar, Arang नोडल की जानकारी: Mr. Dilip Kumar Rahangdale 9009807926	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;"> कक्षास: नर्सरी </td> <td style="width: 50%;"> कुल RTE सीट्स: 10 </td> </tr> <tr> <td> कोएजुकेशन: Co-Ed </td> <td> माध्यम: इंगलिश </td> </tr> </table>	कक्षास: नर्सरी	कुल RTE सीट्स: 10	कोएजुकेशन: Co-Ed	माध्यम: इंगलिश	<input checked="" type="checkbox"/>	1
कक्षास: नर्सरी	कुल RTE सीट्स: 10							
कोएजुकेशन: Co-Ed	माध्यम: इंगलिश							
2	UDISE Code : 22112200727 PVT. GANDHI ENGLISH MED. SCHOOL ARANG Address: NEW MANDI CHOWK WARD NO.1 , GANDHI ENGLISH MEDIUM SCHOOL,ARANG नोडल की जानकारी: Mr. Dilip Kumar Rahangdale 9009807926	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;"> कक्षास: नर्सरी </td> <td style="width: 50%;"> कुल RTE सीट्स: 15 </td> </tr> <tr> <td> कोएजुकेशन: Co-Ed </td> <td> माध्यम: इंगलिश </td> </tr> </table>	कक्षास: नर्सरी	कुल RTE सीट्स: 15	कोएजुकेशन: Co-Ed	माध्यम: इंगलिश	<input checked="" type="checkbox"/>	2
कक्षास: नर्सरी	कुल RTE सीट्स: 15							
कोएजुकेशन: Co-Ed	माध्यम: इंगलिश							

Select Selected Schools

Activate Win

चुनें गये स्कूल एवं प्राथमिकता

क्र.	प्राथमिकता	स्कूल का नाम	नोडल का नाम	कक्षास	माध्यम	RTE सीट
1	1	PVT. MOTHERS PRIDE ENGLISH MEDIUM SCHOOL ARANG	Mr. Dilip Kumar Rahangdale	नर्सरी	इंगलिश	10
2	2	PVT. GANDHI ENGLISH MED. SCHOOL ARANG	Mr. Dilip Kumar Rahangdale	नर्सरी	इंगलिश	15

Figure 4.6 : School selection panel in the Online MIS in Chhattisgarh

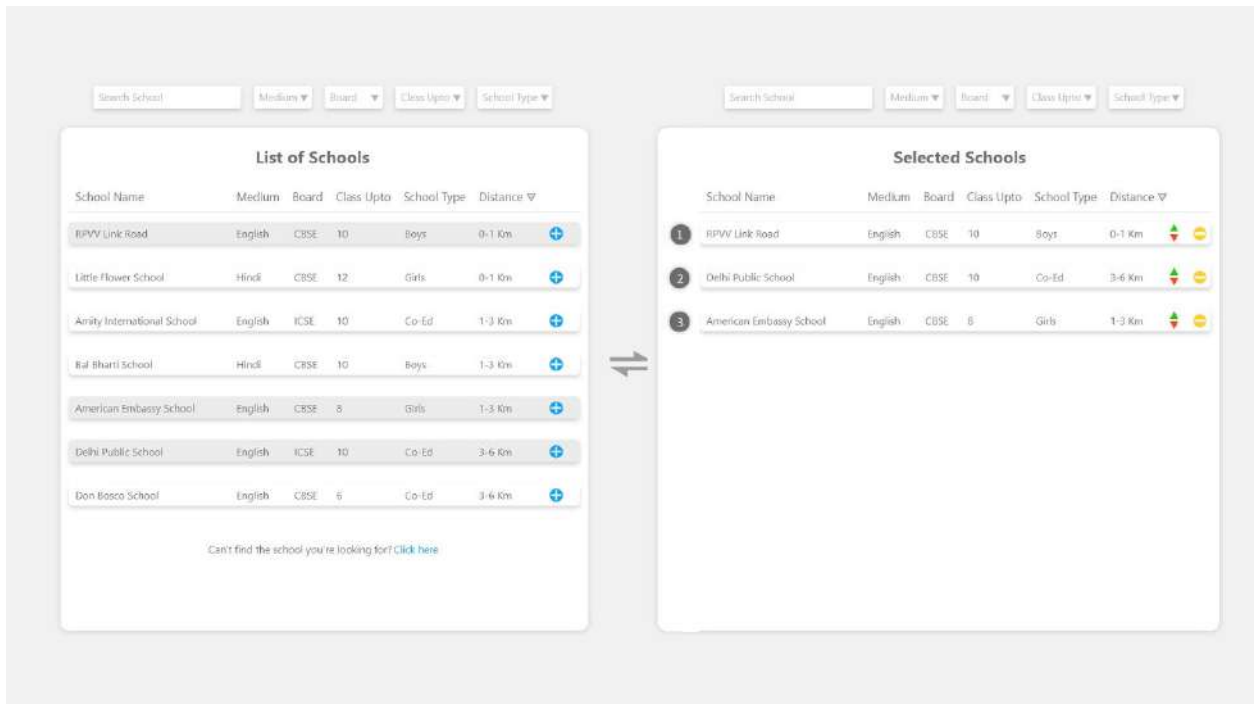


Figure 4.7 : Model User Interface for School Selection panel

Features detailed in the Model User interface for the school selection panel:

1. Filtering options based on Medium, Board, Classes Upto and School Type
2. School Name will link to school profile
3. School options sorted by distance
4. Allows re-ordering of preferences post selection
5. Option to report missing schools

Recommendations

- The most obvious intervention to overcome challenges of user experience could be in the form of having prominently placed instructions on the MIS home page - infographics and short videos highlighting key aspects of the application workflow, such as the choosing of the listing determinant, filtering schools by criteria and ordering preferences.
- Listing all school information prior to the opening of the application window - the interface for listing and filtering out schools can mimic the choosing of the location determinant during the application process. Schools can also have dedicated profile pages with regularly updated details regarding school information, infrastructural details, staff details among others.
- The school mapping logic and the number of choices available to an applicant must be clearly conveyed in the instruction videos and next to the input fields so that consequences of making one choice over the other are clearly conveyed.
- Five key pieces of information - Medium, Board, School Type, Classes Upto and Location must be triangulated and verified by nodal authorities so that post-allotment grievances are minimised.
- A mechanism for reporting errors in information about schools must be incorporated and located right next to the relevant input fields - when this report is forwarded to the appropriate nodal, auto-collection of user context including the fields they have filled so far must be done.
- The school selection and ranking UI must prioritise intuitiveness - choices available and made must be visible together and reordering of options must be possible in the frame containing the chosen schools (Refer Model UI attached).
- Strategy proofing allotment mechanisms must be put in place so that knowledge of the exact allotment mechanism has minimal effect on one's chances in the lottery. (Refer to the section on lotteries for more information about the same).
- Applicants must be allowed the opportunity to review & update their applications till the last date of the application window - this would imply that the final part of the application has both "Save" and "Final Submit" options. In cases where applicants have failed to do a final submit before the last date, their application must be considered for lottery, based on the last saved inputs.



The Department of Education in Madhya Pradesh took an important decision this year to undertake document verification before the lottery process instead of undertaking the scrutiny post lottery. This was done so as to ensure that only eligible candidates are selected for the lottery. Executing this step demanded more efforts on the part of the department as they would now have to verify the entire applicant and not just the lottery winners. This process helped reduce the drop in the number of applicants who failed to secure admissions in a post lottery verification situation, owing to rejection of credentials at this late stage in the process. In this admission cycle about 2.3 lakh applications were registered among which approximately 2 lakh were eligible and 1.7 lakh eligible applicants secured the lottery for admissions.

(Source - Rachna Yadav, State Lead, Madhya Pradesh)

Part II : Lottery Logic

A Comparative Analysis of Lottery Algorithms

Lottery allocation is perhaps one of the most challenging phases in the RTE 12(1)(c) process from a digitalisation perspective. From the information that is publicly available, it is safe to conclude that no two states implementing RTE 12(1)(c) run the same lottery algorithm. While this difference can be attributed in some part to state specific contexts (for instance, in the form of giving preference to certain categories of applicants over others), there are also perceived considerations of transparency, efficiency and fairness that may have likely affected the choosing of lottery designs in different states. This section aims to analyse the respective performances of each of these algorithms on a variety of quantitative and qualitative effectiveness parameters. The goal is to understand the trade-offs involved when choosing one of these algorithms so that the most appropriate design is chosen for a particular state's context.

For the purpose of demonstrating differences in the various lottery algorithms adopted by states, the same (simplified) dataset has been run through all these algorithms and evaluated for certain standard measures of effectiveness.

In addition to the effectiveness question, given the lack of publicly available information with regards to the lottery design in a number of states, it is also important to discuss the impact the choice of a particular lottery design is likely to have on the user experience of an applicant. Certain challenges on the user side with respect to the selection and ranking of school choices have been discussed in the section on the 'User Experience of School Choice'. Users also need to be made aware if the algorithm promotes any 'strategies' that would maximise chances of success.'

[RTE 12\(1\)\(c\) Lottery Process](#)

In Computer Science terminology, the lottery is essentially a **matching algorithm** that assigns resources (school seats) to individuals (applicants). In the current admissions process, each applicant ranks one or more schools in an **ordered preference** in an online or offline form. The lottery mechanism then allots them to one of these preferred schools based on constraints of **seat availability** in each school. Additional constraints to the lottery process, like giving **preference** to certain categories of applicants (based on income, gender, disadvantaged group category or location) are also commonly found in most state RTE rules.

While lottery designs across states are different, they can all be said to be variations of a base algorithm that either assigns **schools to students** or **students to schools**. The various possible branches of this algorithm are detailed in the next section.

Algorithms

There are essentially 12 lottery algorithms that need to be tested and their division can be done based on:

1. **School based Algorithms** - In these, the first step is to pick a school at random and fill some or all of its seats
2. **Student based Algorithms** - In these, the first step is to pick a student (either randomly or based on a pre-defined logic) and match their preferences
3. **Decentralized Algorithms** - Allocation is done at the level of each school independently
4. **Centralized Algorithms** - Allocation is done across schools in a given state
5. **Preference based Algorithms** - Only one preference of a student is evaluated upon randomised selection, in a given iteration
6. **Individual based Algorithms** - Once a student is selected, all their preferences are evaluated in one go, starting from the first
7. **Ordered Preference Algorithms** - Some categories are given preference over others
8. **Randomised Algorithms** - No preference is assigned to any category
9. **Percentage Quota** - Preferred category is reserved a certain percentage of the seats
10. **Absolute Preference** - Preferred category will have first right to every seat

Important terms relating to allocation algorithms

The terms listed below come from the domain of Game Theory. They are often used when different lottery or allocation mechanisms are compared. Understanding the implications of each of these terms is going to be crucial to our analysis going forward.

- **Pareto Efficiency** : In the context of lottery algorithms, an allocation is said to be Pareto efficient if there is no possible reallocation of resources (seats) that would make an applicant better-off without making at least one other applicant worse-off.
- **Strategy Proofness** : An allocation algorithm is said to be strategy proof if it is always in the applicant's best interest to rank their choices truthfully, that is, ordering schools based purely on their preference of one over the other without having to take into account the relative probability of achieving lottery success in the said schools.
- **Justified Envy**⁵⁴ : An allocation is said to give rise to justified envy if there is a possibility of reallocating a resource (seat) to an applicant which the applicant prefers more and the resource also prefers to be allocated to this individual as compared to its current holder. This concept comes into play only if every school has its own independent preference criteria.

⁵⁴ Abdulkadiroglu, Atila, Yeon-Koo Che, Parag A. Pathak, Alvin E. Roth, and Oliver Tercieux. "Minimizing Justified Envy in School Choice: The Design of New Orleans' OneApp." NBER Working Paper Series, No. 23265, March 2017

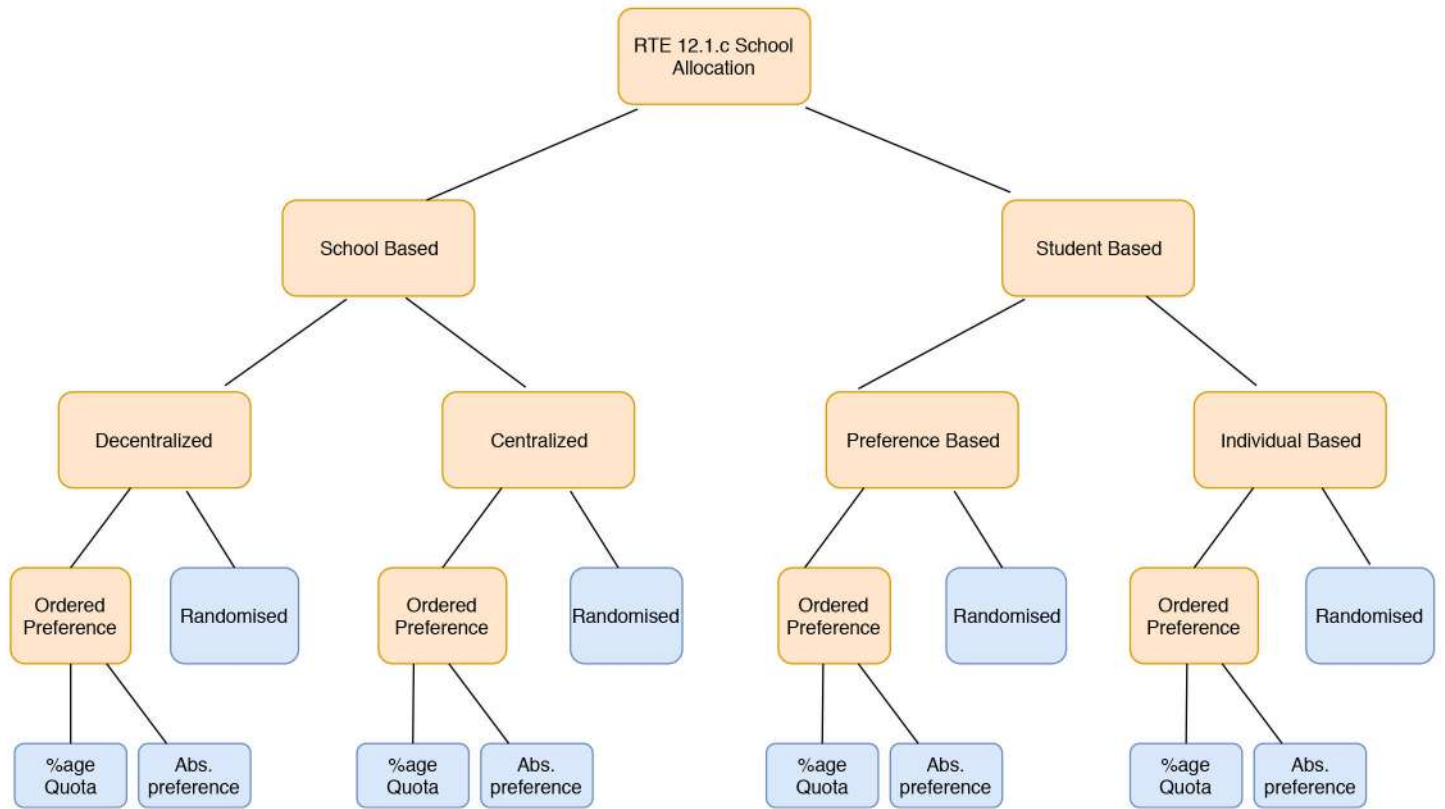


Figure 4.8 : Types of Lottery Algorithms applicable to RTE 12(1)(c)

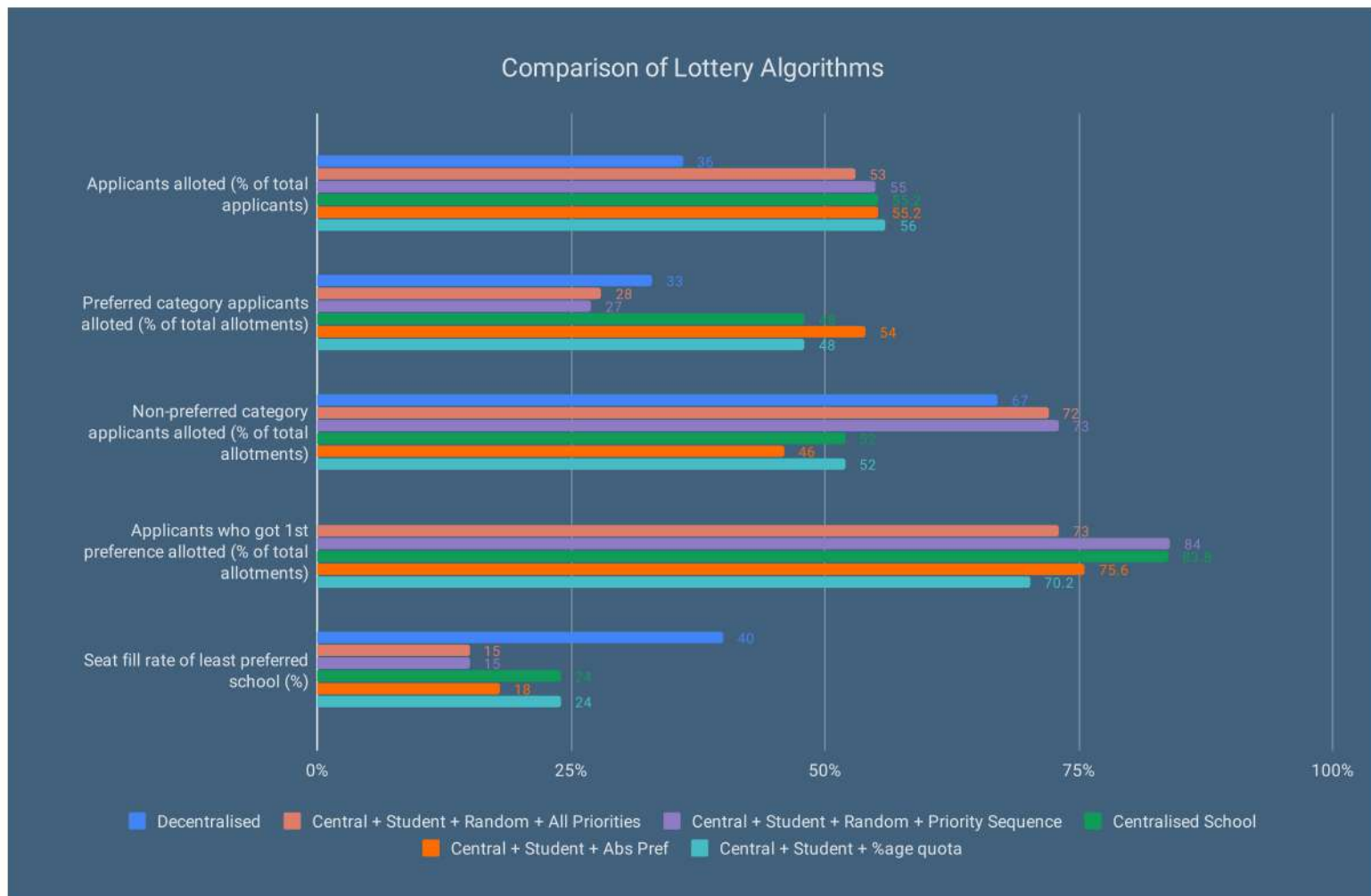


Figure 4.9 : Comparison of Lottery Algorithms on test cases

Methodology

In order to demonstrate the relative effectiveness of these algorithms, we put them through the same simplified test cases - randomised datasets of 150 applicants choosing from 5 schools (maximum of 3 preferences per applicant), with some applicants belonging to a “preferred” category that would be prioritised in the allocation. The algorithms were then evaluated on the basis of pre-defined outcomes like efficiency (total number of students getting allotments), equity (proportion of preferred category candidates amongst the allotted students) and administrative ease of implementation.

Algorithm Analysis

Decentralised school-based lottery

Offline, decentralised lotteries occurring at the level of individual schools are the most common method of allocation among states. This is primarily due to the lack of public trust in online, centralised processes. While running lotteries in schools with applicants in attendance may be better for optics, there are serious inefficiencies associated with decentralised processes:

- **Repeat allotments** - given that there is no reconciliation of lottery winners between schools, an applicant could possibly get lottery success in all the schools that they have applied to. In our dataset, we found that close to 40% of all applicants ended up getting more than 1 school allotted to them when we ran decentralised lotteries.
- **Allocation inefficiency** - repeat allotments, in turn, reduces the allocation efficiency of the algorithm. Our dataset reports an average of 36.67% of candidates not

getting any school at all across the different test cases.

- **Ordering of preferences is essentially invalidated** - Given that the preferences an applicant accords to a particular school has no effect on their chances of lottery success, allocation outcomes are not Pareto efficient, that is, there may be cases where exchanging allotments between two applicants would lead to greater utility for both applicants.
- **Data reconciliation between lottery rounds is challenging** - Second round lotteries in all schools can only happen after the first round lotteries and admissions processes in all schools are completed. Data of both lottery success candidates and admitted candidates need to be digitised for this purpose.
- **Many more rounds are required** - Given the allocation inefficiency of these processes, more rounds of lottery are required to achieve the same overall fill-rate in schools as compared to centralised processes.

Centralised school-based lottery

Centralising the school-based lottery process, in part, addresses the lack of trust in the online process by conducting lotteries separately for each school while keeping information of lottery success candidates shared across schools. The issue of repeat allotments is taken care of by running the lottery for each priority separately. This in turn increases allocation efficiency significantly. Our dataset reports 0 repeat allotments and an average of 55.2% allocation efficiency across the various test cases (compared to 36.67% for decentralised lotteries). There are, however, a couple of logistical challenges in running this category of lottery algorithms, including:

- As in the case of decentralised lotteries, each school lottery has to be run and **reconciled** before next round happens.
- **Many lottery rounds** are required (upto the maximum number of preferences that can be filled) - this is feasible in states like Chhattisgarh where the average number of preferences per applicant is less than 2, but nearly impossible for states like Gujarat and Delhi where 15 to 20 rounds may be required.

Student and individual based

While centralised, student-based lotteries are seemingly more prone to perceptions of manipulation, the case for them can be made on grounds of efficiency, both in terms of the allocation efficiency of the lottery algorithm (the allocation efficiency of this algorithm is 53% across test runs in our dataset) as well as logistical efficiency of reconciling lottery outcomes and conducting subsequent lotteries. Centralised student-based algorithms are also easier from a digitalisation perspective - lotteries can be carried out for the whole state at the click of a button, SMS notifications can be automatically triggered, and schools will have a ready-made list of allotted applicants, following which the process remaining is only of confirming admissions before a specified date.

The concerns with this type of an algorithm are as follows:

- Allocation outcomes may not be Pareto efficient as allocation would depend on which candidate is (randomly) picked at what time in the lottery process.
- Success essentially depends on a single round of randomisation - this could be seen as less fair than the preference based algorithm mentioned below
- While this allocation method is mostly strategy proof (it is in the applicant's best

interest to record their preferences accurately), number of preferences ideally need to be capped to ensure that choices are efficient.

Student and preference based

In the preference-based variant of the centralised student-based lottery, every preference gets fair representation as randomisation is done once for each preference. This is likely to make the allocation model more Pareto efficient. The allocation efficiency is also marginally higher than the individual-based model (55% vs 53%).

The major concern with this category is that it is **not strategy proof** - given the algorithm runs for each preference, applicants may end up choosing a less popular school as first choice to maximise lottery success outcomes. This also makes the allocation mechanism prone to unfairness on grounds of information asymmetry.

Adding ordered preference/percentage quotas to centralised student-based algorithms

There has been a tendency amongst states to introduce preference for particular categories within the 25% quota. Some states have made preference for particular DG categories or girls, based on historical trends in their RTE 12(1)(c) applications. There are two different implementation models for this. The first is to give absolute preference to particular categories, irrespective of the number of applicants. The second is to split the 25% reservation into other percentage quotas.

In our simplified analysis, the incorporation of absolute or percentage quotas does not significantly affect the overall efficiency of the allocation, with the percentage quota algorithms performing marginally better (56%

vs 55%) in terms of total allocation efficiency. There is, as expected, an appreciable increase in the percentage of preferred category

candidates that get allocations in both algorithms.

Recommendations

Understanding the trade-offs between efficiency, equity and administrative ease of implementation is thus a key step before defining the appropriate algorithm and constraints in a lottery design. Each state may want to optimise for a different variable, based on their own context and priorities.

Having said that, centralised and online lotteries are demonstrably more efficient, both in terms of allocating more applicants to preferred schools and ease of implementation of the admissions reconciliation and subsequent lottery processes. Concerns over the fairness of the online process can be managed in a number of ways:

- Making the lottery process log files public after execution to show the exact mechanism by which students and their choices were picked up and mapped.
- Simplified test cases depicting a range of different input scenarios and their corresponding allocations can also be made public. Individuals could also propose new test cases for evaluation.
- Third-party audit of the lottery code and test cases.

Information dissemination with respect to the working of the lottery process is not only critical to building public trust in the process, but can also help applicants devise the right 'strategies' when selecting and ranking their school choices. Ideally, however, lottery success chances should be immune from any knowledge of the inner workings of the lottery algorithm.

Going forward, if a case is made for allowing schools to make their own choice about preferred categories, another important consideration would have to be factored in - that of minimising justified envy. This is likely if special category schools like minority schools implement the provision in the future. Preserving their right to manage their own admissions could involve these schools being allowed to set their own preference criteria for applicants. In this case, states should consider an entirely new class of algorithms such as the Deferred Acceptance Algorithm for managing allocations (Refer Appendix 4).



CHAPTER 5: REIMBURSEMENT

PART I : HISTORICAL CONTEXT

PART II : CHALLENGES

PART III : RECOMMENDATIONS

A key component for sustainable implementation of the RTE Act is clear and consistent fund flow between Centre, State and the beneficiary. As a Centrally Sponsored Scheme, the RTE is implemented by the State, with a predefined Centre-State fund sharing ratio, a majority of the financial inputs being borne by the Centre.

Part I : Historical Context

The Ministry for Human Resource and Development (MHRD) estimated a total capital and recurring expenditure of Rs 2.31 lakh crore for the implementation of RTE over the first five-year period from 2010-15.⁵⁵ Separately, the 13th Finance Commission also provided a grant-in-aid of Rs 24,068 crore specifically for elementary education⁵⁶ which was to be released directly on an annual basis to the State Governments from the Finance Ministry. This amount was to be deducted from the overall estimate of Rs 2.31 lakh crore, and the balance amount of Rs 2.07 lakh crore was to be shared between the Central and State Governments in the 65:35 ratio for the implementation of RTE through the Sarva Shiksha Abhiyan programme. In the case of states in the North-Eastern region (NER), the fund sharing pattern was to be in the 90:10 ratio.

In view of the higher devolution of funds to States after the 14th Finance Commission recommendations, the fund sharing ratio has been revised to 60:40 while it remains at 90:10 for the NER states and the 3 Himalayan States.⁵⁷ In 2018-19 Samagra Shiksha Abhiyan subsumed the three Centrally Sponsored Schemes of SSA, Rashtriya Madhyamik Shiksha Abhiyan (RMSA) and Teacher Education (TE) extending Central support across all levels of school education.

The Cabinet Committee on Economic Affairs (CCEA) has approved an outlay of Rs 34,000 crore in 2018-19 and Rs 41,000 crore in 2019-20 for Samagra Shiksha. This includes a 22 per cent increase over combined allocations of SSA, RMSA and TE in the previous financial year.

[Fund Flow for RTE under Samagra Shiksha Abhiyan](#)

Under the current Samagra Shiksha Abhiyan, the State Governments present their state plan to the Project Approval Board for budget allocations from the Centre. The Project Approval Board (PAB) of the National Mission approves the Annual Work Plan & Budget (AWP&B) on the basis of the Proposal of the State Government, the Appraisal Report, availability of Central Plan funds, and the commitment of the State government regarding financial resources. The Central Government then releases the funds to the State Government for further release to the State Implementation Society, along with the State share as per the prevailing sharing pattern.

⁵⁵https://mhrd.gov.in/sites/upload_files/mhrd/files/document-reports/RPE_2011-12.pdf

⁵⁶<https://dea.gov.in/sites/default/files/guideline-ElementaryEducation.pdf>

⁵⁷

<https://pib.gov.in/newsite/PrintRelease.aspx?relid=132416>

The tranche arrangements under the SSA are:

1. Government of India would release ad-hoc grants during the months of April-May of up to 25% of the expenditure incurred under the Scheme against recurring activities of the previous year. However, the amount would be released after adjusting unspent balance of recurring grant of the previous year.
2. First installment for recurring grant would constitute up to 75% of the total amount sanctioned for the year. The adhoc releases and closing balance of the Central share of the previous Financial Year (FY) as on 31st March would be adjusted in the first installment. One of the conditions for the first tranche transfer is the receipt of the Utilisation Certificates on provisional basis for the preceding year. The first installment would cater to the expenditure from April to September.
3. Second installment for expenditure done from October to March includes balance of funds eligible for release after adjusting the adhoc releases, first instalment releases and unspent balance of the previous FY. The release is subject to the following conditions: (i) Submission of expenditure statement showing

that at least 50 percent of funds/resources already released have been utilized at the time of submission of the proposal for the second instalment in a financial year. (ii) Submission of certificate regarding the release and receipt of the State share against the amount of the Central funds released so far. This must be accompanied with a copy of the order sanctioning the State share.

The budget allocation for expenditure on implementation of RTE 12(1)(c) has been designed on a reimbursement model wherein the State Governments make claim for funds based on actual expenditure incurred due to reimbursements to schools. The defined reimbursement cycle can be described using the flow diagram Figure 5.1.

Some states have another level of block level verification wherein the funds flow from state to the district to the block. The schools are usually reimbursed in two installments - once in September/October and once in January/February. Reimbursements for books and uniform also have a similar flow. However, in states like Uttar Pradesh, the reimbursement for books and uniform is directly transferred to the bank account of the parent.



Figure 5.1 : Process flow for reimbursement claims under Section 12(1)(c)

Part II : Challenges

The SSA rules⁵⁸ cap the reimbursements under RTE 12(1)(c) to a maximum ceiling of 20 percent of the size of the SSA Annual Work Plan and Budget. However, states have not met that limit for a single financial year. In FY 2018-19, the RTE 12(1)(c) expense of the central government was a mere 5.5% of the total SSA budget. This is not limited to RTE 12(1)(c) but points to an overall trend in expenditure as a share total of approved budgets for SSA. In FY 2015-16, 70 percent of the total approved budget for SSA was spent. This declined to 66 per cent in FY 2016-17 and further to 59 per cent in FY 2017-18.⁵⁹

PAB allocations for reimbursements under RTE 12(1)(c) made in 2019-20 show that out of the 12 states that claimed reimbursements, five states⁶⁰ received approval for over 70 percent of their proposed amounts. Chhattisgarh, Delhi, Gujarat, Madhya Pradesh, Maharashtra, Tamil Nadu and Uttar Pradesh have received less than 70 percent of the proposed budget for reimbursements for the second year in a row. Bihar has not filed for reimbursements despite getting 100 percent approval last year.

According to the PAB minutes, the difference between proposed and allocated budget for Madhya Pradesh was due to a miscalculation of unit cost as per child cost instead of average cost. This resulted in a proposal of Rs. 443.84 Cr. while the actual proposal was of Rs. 330.43 Cr. An amount of Rs. 240 Cr. which State has

reimbursed for children in Classes 1 and above for the year 2017-18 was hence recommended.

In the case of Gujarat, the State government proposed Rs. 280.56 Cr. for 2.15 lakh children. However, as per documents provided by the State, it had reimbursed Rs. 142.18 Cr. for 1.42 lakh children of Class 1 and above. Therefore, Rs. 142.18 Cr. was approved. This difference could possibly be due to proposal on anticipated expenditure rather than actuals or claims for pre-primary admissions. While the 2019-20 PAB minutes for other states do not mention specific reasons for low reimbursement rate, the Brights Spots report 2018 identified major challenges which could be valid for the current allocations as well:

1. **Non-submission of relevant supporting documents** : The State Education Department is required to submit a letter of grant from the State Finance Department along with the letter showing actual reimbursements made to private schools under Section 12(1)(c).
2. **Proposal on anticipated expenditure rather than actuals** : The approved budget is based on the actual disbursement made by the education department to private schools during the previous year.
3. **Claims for pre-primary admissions** : The Centre approves funds annually to States and UTs for children admitted/studying in Classes 1 and above as per approved norms on reimbursement basis. It does not cater to reimbursements for admissions in pre-primary and States are expected to

⁵⁸ Rajya Sabha Unstarred Question 1837; Reimbursements claimed by States under SSA, Hussain Dalwai Retrieved from <http://pqars.nic.in/annex/246/Au1837.doc>

⁵⁹ Lok Sabha Unstarred Question 995; dated 17 December, 2018, Sarva Shiksha Abhiyan Funds, Janardan Singh Sigrival Retrieved from <http://164.100.24.220/loksabhaquestions/annex/16/AU995.pdf>

⁶⁰ 5 states that received approval for over 70% of their proposed amount are - Jharkhand, MP, Odisha, Rajasthan, Uttarakhand



Ratnakar Sahoo is the founder of Ashayen, a non-profit that works on giving every child from a disadvantaged background an equal shot at education, development and the opportunity to live life with dignity. It was in 2018, that Ratnakar got to know about RTE Section 12(1)(c) and he saw this as a great opportunity to support the kids they work with to secure admissions in good private schools. Initially, Ratankar worked to get five children admitted in two high-income private schools in Bhubaneswar. Odisha does not have an online system for RTE Section 12(1)(c) and hence Ratnakar had to put in extra efforts to secure admissions for the five children, in kindergarten.

(Source - Prakash Sahoo, Odisha)

reimburse the amount from the State SSA budget.⁶¹

The low reimbursement rates due to lack of clarity regarding norms of making claims and non-submission of supporting documents create a shortage and subsequent delay in the timely release of funds from the state to the districts and further to the schools. The lack of streamlined fund flows and delays at various nodes have severe implications on the students admitted under the provision. Students who are studying in private schools under the scheme face the threat of being expelled while the private schools create pressure on parents for payment of the full fee.⁶² Several parents struggle to cope with the financial burden created by ancillary costs like books, stationery and uniforms for private schools, since delay of reimbursements during the academic year is unable to cater to these immediate needs.⁶³

The private unaided schools in several states have been protesting against the delay in reimbursements and refused to take further admissions. Private School Managements and Associations have made representations before the government since schools in various states have not received funds for several years. In Karnataka, the Associated Management of Primary and Secondary Schools have claimed that the government owes over Rs. 600 crores for two academic years. The Association also filed a complaint with the State Department against the Deputy Directors of Public Instruction for delay in the distribution of funds released by the State Government. This year the

Unaided Private Schools Association from Uttar Pradesh also refused to take further admissions due to pending reimbursements for the last six years. This hinders the very essence of free and compulsory access envisioned within Section 12(1)(c).

As stated in Parliament, 17 states have notified their Per-Child Cost (PCC). Details of the PCC across the states, except Assam and Himachal Pradesh, as per the AW&PB 2018-19 is detailed in Table 5.2. Section 12(2) of the RTE Rules 2009 details the methodology of PCC calculation as the total annual recurring expenditure incurred by the State Government, from its own funds and from the funds provided by the Central Government and by any other authority on elementary education in respect of all the schools established, owned or controlled by it or by the local authority, divided by the total number of children enrolled in such schools. However, some private schools have raised concerns regarding the notified PCC being low and against the methodology followed by various State Governments for its calculation.

The RTE Act and the subsequent rules do not mention the frequency of per-child cost calculation but several states have regularly reworked the PCC based on inflation, externalities impacting total expenditure borne by the Governments and changing enrolment rates in Government schools. Tamil Nadu revised its PCC in July 2017, Delhi revised its PCC twice in 2016 and 2018 and Maharashtra in 2016 after 2013. However, states like Uttar Pradesh and Bihar have not revised their PCC since 2013.

⁶¹ Rajya Sabha Unstarred Question No-3710 Answered On-25.07.2019, Retrieved from: <http://pqars.nic.in/annex/249/Au3710.doc>

⁶² <https://timesofindia.indiatimes.com/city/coimbatore/ukg-student-admitted-under-rte-act-sent-out-of-school-for-not-paying-fees/articleshow/69732096.cms>

⁶³ <https://www.hindustantimes.com/delhi-news/ews-students-at-private-schools-still-waiting-for-free-books-uniforms/story-zHNz6mULS8RRrIO7uHRsal.html>

Sl. No	State	Proposed 12.1.c Budget (Rs. in Crores)	No. of children based on proposal	Approved 12.1.c Budget(Rs. in Crores)	No. of children based on approval	% Approved
1	Chhattisgarh	169.80	171,360	49.50	171,360	29.15%
2	Delhi	115.47	215,227	62.94	121,570	54.51%
3	Gujarat	280.57	215,820	142.18	141,528	50.68%
4	Jharkhand	8.35	16,378	7.16	14,045	85.76%
5	Karnataka	-	-	148.59	342,584	-
6	Madhya Pradesh	330.43	956,557	240.01	697,740	72.63%
7	Maharashtra	364.28	239,330	120.00	180,978	32.94%
8	Odisha	0.88	963	0.88	963	100.00%
9	Rajasthan	174.25	425,322	174.25	425,322	100.00%
10	Tamil Nadu	179.52	271,386	70.78	94,930	39.43%
11	Uttar Pradesh	41.73	71,927	25.87	83,099	61.98%
12	Uttarakhand	60.00	94,280	57.86	92,556	96.44%
Total		1,725.29	2,678,550	1,100.03	2,366,675	

Table 5.1 : Claims for reimbursements and approved amounts across states in PAB 2019-20

Sl. No	State	Per-Child Cost (Rs. Per child per annum)
1	Bihar	Rs. 6569
2	Chandigarh	Rs. 16440
3	Chhattisgarh	Rs. 7650 for Primary and Rs. 12050 for Upper Primary
4	Delhi	Rs. 26908 for Primary and Rs. 26708 for Upper Primary
5	Gujarat	Rs. 13000
6	Jharkhand	Rs. 5100
7	Karnataka	Rs. 8000 for Primary and Rs. 16000 for Upper Primary
8	Madhya Pradesh	Rs. 4419
9	Maharashtra	Rs. 17670
10	Odisha	Rs. 12602
11	Rajasthan	Rs. 13945
12	Tamil Nadu	State has notified class-wise per child cost which is as follows:- Rs. 25155.21 (Class I) Rs. 25184.34 (Class II) Rs.25383.05 (Class III) Rs.25392.64 (Class IV) Rs.25425.10 (Class V) Rs. 32897.26 (Class VI) Rs. 33066 .00 (Class VII) Rs. 33146.03 (Class VIII)
13	Tripura	Rs. 21138
14	Uttar Pradesh	Rs. 5400
15	Uttarakhand	Rs. 16596

Table 5.2 : Details of notified Per-Child Costs across states

Part III : Recommendations

Rajasthan and Madhya Pradesh have been able to create transparent reimbursement systems which have enabled both the schools as well as the public to track the flow of reimbursements from the government to the school. Both these states have comprehensive MIS systems which provide real-time data on admissions at the state, district and block-level and reimbursement flow through each of these nodes.

1. Linkages with PFMS

One of the biggest challenges for reimbursements under RTE 12(1)(c) is the lack of streamlined fund flow from the State to the School and the Centre to the State. A key intervention in this context is the Public Finance Management System (PFMS) which was launched in 2013 as a financial management platform for all plan schemes including the SSA. PFMS is mandated to create a comprehensive database of all recipient agencies which can be integrated with core banking solution of banks, handling plan funds to effectively track fund flow to the lowest level of implementation for plan scheme of the Government. The goals behind the setting up of PFMS were better cash management and greater transparency and accountability. SSA has been registered as one of the Centrally Sponsored Schemes to be integrated with the PFMS.

All implementing agencies till the last level, schools in case of the RTE, are registered with their bank accounts by the sanctioning ministry. The State treasury is then integrated with PFMS. After completion of the registration process, the agencies can login to the PFMS portal and create Maker and Checker type users to use Expenditure-Advance-Transfer modules (EAT module) for transferring funds or advances to

lower level agencies and make e-payments to vendors, employees and beneficiaries. Funds under SSA can be transferred up to the school level through PFMS.

Integration of the RTE reimbursement process with the PFMS system allows easier state transfer of funds to all the schools online. The PFMS enables access to real-time information on resource availability and utilization without the administrative procedures for fund transfer across the various nodes. Also with data on fund utilization being available online, utilization certificates could be provided to the MHRD in a timely manner enabling the Ministry to release subsequent instalments.

While almost all the states included implementation of PFMS up to the last destination (school) in their Annual Work Plan 2017-18 commitments, only a few have completed registration of schools in the portal according to monitoring reports by the PAB. The PFMS portal integration with SSA fund transfer for reimbursement can considerably reduce the procedural challenges faced by the State Governments to claim funds against the amount disbursed to private schools for students admitted under Section 12(1)(c). The portal can streamline the process of implementation by creating transparent channels of fund flow across the various nodes and reducing the administrative and financial management challenges of a reimbursement cycle. The PFMS is currently being used for Direct Benefits Transfer schemes like Pradhan Mantri Matritva Vandana Yojana (PMMVY) to transfer the requisite amounts directly to the beneficiary through an Aadhaar-linked bank account thereby eliminating the existing intervening layers. Given the tranche arrangements and reimbursement claims within RTE, MHRD can create training modules for state departments to support the transition towards an online

PFMS portal for transparent and effective fund flow.

2. Online reimbursement Module

A comprehensive online reimbursement module integrated into the RTE MIS can be used to track reimbursements at the State level. Such modules are already being used by states like Rajasthan, Madhya Pradesh, Maharashtra and Chhattisgarh that have mature MIS systems. The following model reimbursement framework can be used as a template by various states to create/enhance the module:

1. This module tracks the status of reimbursements due to schools in lieu of tuition & other expenses incurred by the school on behalf of all children admitted under the provision.
2. The first step of the reimbursement flow occurs in the school registration module, where the schools enter their seats and fee details which are then verified by nodal officers.
3. Upon completion of all lottery cycles and the admission process, the MIS updates the list of

students admitted in all schools. Based on the number of students admitted and retained, and the fees (tuition and other fees) claimed by the school, a reimbursement demand will be generated which will be visible on the district nodal's login. Schools are required to update any dropouts during the academic year through the student tracking module, following which the reimbursement amount due will be adjusted accordingly.

4. The reimbursement amount due to the school will be subject to a cap of a per-child cost pre-determined by the state government (which can be updated using the state admin login).
5. The district nodals can view the reimbursement status of all schools in their jurisdiction through their respective logins. They can also update the status of any reimbursements made through this view.
6. The school admins can then acknowledge receipt of the reimbursement amount through their logins.



CHAPTER 6: STUDENT TRACKING

PART I : BACKGROUND

PART II : EXAMPLES OF STATES

PART III : RECOMMENDATIONS

The Right to Education legislation came in the context of a global push towards inclusive and equitable quality education in the Millennium Development Goals and Sustainable Development Goals. After almost a decade of the existence of the legislation, India has made considerable progress in increasing access to education at all levels with improved enrolment rates in schools.

Part I : Background

In the context of RTE 12(1)(c), the fill rates and school participation rates for private schools reported by various states have gone up comparatively over the last few years. Several states have created extensive online or offline systems for ease of access to provisions under RTE 12(1)(c) including comprehensive procedures for school participation, student application, lottery, student tracking post-admissions and consequent reimbursements. However, we see a huge gap in tracking the lifecycle of a student post-admission to measure the real impact of access to free and compulsory education under the provision. There is a lack of effective monitoring and evaluation procedures to track the conversion of enrolments into regular attendance of the beneficiary students and measure the consequent impact on their learning outcomes. The Draft National Education Policy, 2019, also mentions that there should be monitoring of students' progress and if/when needed, extra help should be provided to students requiring remedial help.

Section 8 and 9 of the RTE Act

Apart from providing access and creating school infrastructure, one of the key responsibilities mapped out for Governments and local authorities under Section 8 and 9 of the RTE Act is on monitoring quality of

education and tracking of students post enrolment. Section 8 of the Act mentions:

The appropriate Government shall-

- (f) ensure and monitor admission, attendance and completion of elementary education by every child;*
- (g) ensure good quality elementary education conforming to the standards and norms specified in the Schedule;*
- (h) ensure timely prescribing of curriculum and courses of study for elementary education; and*

In addition, Section 9 extends it for the local authority:

Every local authority shall-

- (l) monitor the functioning of schools within its jurisdiction;*

A combined reading of these two Sections define a wide scope of authority for Governments to design and implement regulatory procedures to ensure access, not just in terms of mere enrolments, but to also ensure quality education and to provide appropriate support structures that lead to the completion of education and promote learning opportunities.

Need for Student Tracking

While some checks and balances have been created to monitor drop-outs and learning outcomes in government schools, private schools have largely remained outside the ambit of these processes. With increased private sector participation in education and about 3 lakh private schools constituting around 31 per cent of the total children enrolled⁶⁴, private schools have mostly been unregulated. Student tracking to monitor real-time access and impact on learning levels have become crucial in the context of RTE 12(1)(c), given that up to 20 percent of the Samagra Shiksha budget for states can be earmarked for reimbursements for admissions of EWS/DG students under the provision.

The Draft National Education Policy, 2019, takes the current situation into consideration and recommends strong student tracking systems for attendance and performance tracking. The draft policy aims to achieve universal participation in schools by carefully tracking students, as well as their learning levels, in order to continually work towards ensuring that the students are not just enrolled in and attending schools, but also have suitable opportunities for remediation and reentry to catch up in case they have fallen behind or dropped out.

⁶⁴U-DISE Flash statistics 2016-17, Retrieved from: http://udise.in/Downloads/Publications/Documents/Flash_Statistics_on_School_Education-2016-17.pdf

Ali Ahmad and Abdullah were admitted in Pioneer Montessori School, Lucknow, Uttar Pradesh under RTE Section 12(1)(c). Both of them managed to achieve the first rank in a mathematics competition and were awarded a shield, a certificate and Rs. 500 cash prize. Both are now eyeing the inter-school competition and are aiming to bring glory to their school. Ali Ahmad, studying in Class 1 also won the student of the year award for topping his class. His father, who works at a shop, hopes that one day these children will serve the country by becoming IAS officers.

(Source - Navbharat Times, Lucknow) - Saleem Khan, Partner Entrepreneur, Uttar Pradesh



Part II : Examples of states

Tracking Attendance

Over the last few years, some of the State Governments have been building monitoring processes to keep track of students who have gained admissions under RTE 12(1)(c). In most cases, attendance is being used as the proxy to track the engagement of EWS/DG students in classrooms and to measure drop-outs rates before Class 8. Transparent and reliable tracking of attendance has been effective as the first level check to ensure that the student is enrolled in the school and has not dropped out before the completion of primary education. This is especially critical in the context of RTE 12(1)(c) to remediate patterns in drop-outs in case children face discrimination in classrooms or find difficulty in integration at schools.

States like Madhya Pradesh, Rajasthan and Chhattisgarh use their existing online MIS systems to track student attendance in a transparent manner. Attendance has been linked to reimbursements to increase the importance of these monitoring mechanisms, in certain states. Madhya Pradesh maps each student admitted under RTE 12(1)(c) to a Samagra ID, which is a unique identity number used to access social benefits provided by the government in the state. This unique student ID is also mapped to a family Samagra ID and a bank account which receives reimbursements.

Part III : Recommendations

As we move to the tenth year of RTE implementation, it is imperative to design comprehensive student tracking mechanisms which move beyond ensuring regular attendance to tracking learning outcomes of EWS/DG students in comparison to the other fee-paying students in their classrooms. Section

Mr. Ramakant Tiwari, RTE Coordinator at the Rajya Shiksha Kendra in Madhya Pradesh explains the rigorous student tracking processes being implemented by the State Government to monitor students being admitted under RTE 12(1)(c), “A verification officer has been allotted to every private school taking admissions under the provision. The verification officer is responsible for tracking the attendance and *pragati patra* (progress report) for admitted students. The reimbursement claim submitted by the school every year is conditional to minimum 75 percent of recorded attendance for each student. These details are regularly updated on our RTE portal to maintain transparency. We also mandate yearly e-KYC verification of every beneficiary to monitor drop-outs.”

Chhattisgarh has also recently set up a student tracking module within its MIS which aims to track attendance on a regular basis. “Student tracking is very important to address drop-outs in the system. Digitizing data makes the process easier. We are currently doing it for students being admitted through RTE in private schools in Chhattisgarh, but it should be done for all students in the system” explains Mr. S. Prakash, IAS, Director, DPI, School Education Department, Govt of Chhattisgarh.

12(1)(c) was built into RTE with the idea of enhancing social cohesion and fostering inclusion among children coming from different backgrounds and with varying interests and abilities. Therefore, learning levels would be an effective metric to measure if Governments have been able to achieve the defined policy

goals. Studies like the Annual Status of Education Report (ASER) have been a game changer in revealing the severe learning crisis in government schools with a high percentage of children who are enrolled in primary schools failing to attain even basic skills such as foundational literacy and numeracy while the focus remains on measuring impact through enrolment rates. Students admitted to private schools under Section 12(1)(c) should be integrated into existing tracking systems while also creating processes to monitor student progress within the private school ecosystem.

Recommendations

1. Student Database MIS
2. Class Ranking
3. Common Assessments
4. Social Audits

1. Student Database Management Information System (SDMIS)

The Ministry of Human Resource Development (MHRD) has been working with the National Institute of Educational Planning and Administration (NIEPA) to design a Student Database Management Information System (SDMIS) within U-DISE to collect child-wise data against a unique student ID generated through the system which would help to track all the students throughout the school-cycle. The SDMIS would be one of the largest national student databases to capture information for over 250 million students studying across Government, Aided and Private schools from Classes 1 to 12. The SDMIS has huge potential to provide real-time updated data for cross-sectional indicators across all levels. While the SDMIS currently mandates Aadhaar

ID as the unique identifier to map students, it could be replaced with a system-generated unique student ID to create inclusive monitoring processes.

2. Class ranking

Similar to the verification processes put in place by Madhya Pradesh, keeping a track of class ranking of EWS/DG students can be a good relative measure of their performance in the classroom. In case beneficiary students consistently feature low in the class ranking list, schools can be pushed to take remedial measures to support these students in an inclusive and sensitive manner. The School Management Committees, recommended for private schools in the Draft NEP, can be empowered to identify these learning difficulties, development challenges and emphasise the need of support for these students.

3. Common Assessments

Common Assessment Surveys can be created for students admitted under Section 12(1)(c) to provide insights into the student learning levels in a periodic manner. Madhya Pradesh and Chhattisgarh are creating student learning assessments to track foundational learning at constant intervals. The Draft NEP recommends a review of the National Achievement Surveys (NAS) and Student Assessment Surveys (SAS) for government schools. While the NAS is based on a sample and provides an educational 'health check-up' of the system, SAS is based on census format across Classes 3, 5 and 8 to track student performance. Assessments for students under Section 12(1)(c) can be integrated into these surveys to understand the implementation status and effectiveness of Section 12(1)(c).

The draft policy also urges Governments to ensure that these assessments are not used to

grade or evaluate the students but to provide individual feedback to local stakeholders, and to assess the general state of learning and learning outcomes in the State based on aggregate data and anonymous testing, to help guide the continual improvement of the educational system.

4. Social Audits

Social Audits can be another effective monitoring mechanism to track the reach and quality of RTE provisions including Section 12(1)(c) through a participative approach. Social audits have played an important role in creating transparency and accountability in several service delivery schemes like the Mahatma Gandhi National Rural Employment Guarantee Act (MNREGA), Public Distribution System (PDS) etc. Social audits have been used regularly to compare official records with actual ground realities, with the participation of the community in the verification exercise, and reading out the findings of the verification exercise aloud on a public platform. The social audit process goes beyond merely accounting for the money, but also to examine whether the money was spent judiciously and achieved its policy goals.

While social audits for government schools have been frequent, private school admissions have largely been outside their purview. As was recommended by the SSA report⁶⁵ on the RTE Act, “Regular social audits that report on the practices inside the school and classrooms regarding the included children will also help in monitoring the continued and active participation of these children in the private schools”, it is necessary to institutionalise social audits as a monitoring mechanism for the admissions process under RTE 12(1)(c). Many of

the State Governments like Chhattisgarh, Haryana, Bihar and Gujarat have dedicated Social Audit Units which run audits for certain set of schemes. The education departments can facilitate social audits in collaboration with the Social Audit Unit/Department to track student enrolments under RTE 12(1)(c), attendance, and monitor student performance. The state units can be mandated to create a framework for School Social Audits under the provisions of RTE. Social Audit Facilitating Teams can be created including representatives from School Management Committees (SMC), parents of the children belonging to EWS/DG category, local authorities and civil society citizens, to capture data for the key parameters that need to be monitored on a regular basis. A set of tools should be developed for auditing different aspects of the RTE Act and the audit facilitating team should be trained thoroughly in the use of these tools. The social audit protocol and schedules can be integrated into the RTE portals which can be further linked to reimbursement. Similar to schemes like MNREGA and PDS, a portion of the RTE budget can be earmarked for transparency, accountability and monitoring purposes.

⁶⁵ SSA final report on RTE Act-2009 (Anil Bordia Committee), Retrieved from <http://vikaspedia.in/education/policies-and-schemes/right-to-education/RTESSAFinalReport.pdf>

A photograph of a woman in a purple floral sarong and a man with a bicycle on a dirt road. The woman is in the foreground, and the man is standing next to a blue bicycle. The background is a dirt road lined with trees and a utility pole. A semi-transparent red rectangle is overlaid on the image, containing the chapter title and table of contents.

CHAPTER 7: GRIEVANCE REDRESSAL

PART I : BACKGROUND

PART II : STATUS OF GRIEVANCE REDRESSAL

PART III : RECOMMENDATIONS

The RTE Act makes use of a legal framework to ensure the proper functioning of this rights-based policy. This approach is based on three premises: The first premise, is the demand-side wherein people are aware of their rights and are informed about the channels they can make use of to demand this right. The second premise focuses on supply-side factors wherein the authorities are able to meet these demands effectively. The third premise necessitates the existence of an independent grievance redressal and monitoring body which not only ensures that all the implementation systems are in place on the supply-side but also works towards redressing concerns arising from the demand-side.

Part I : Background

News reports have often shed light on the discrepancies in the process of admissions under the RTE 25% quota and the problems faced by parents and guardians of applicants, on account of such discrepancies. For instance, as of September 2019, almost half the RTE seats in Maharashtra were vacant despite three rounds of admissions. This was reported to predominantly be due to 'hurdles in the admission process' and resistance faced by parents from private schools ("Edu dept to hold another round of RTE admissions," 2019).⁶⁶ Audit reports of the implementation of the RTE Act, by the Comptroller and Auditor General (CAG) of India, point to several compliance issues on the part of the state governments in implementing the Act. Such shortcomings, despite concerted efforts on the part of the executive, calls for setting up a robust and structured grievance redressal system which empowers the parents to draw attention towards systemic flaws and demand its rectification.

According to the recent Abidjan Directives, "States must respect, protect, and fulfil the right to education of everyone within their jurisdiction in accordance with the rights to equality and non-discrimination." It further adds that, "States must put in place adequate mechanisms to ensure they are accountable for their obligations to respect, protect, and fulfil the right to education, including their obligations in the context of the involvement of private actors in education" and that, "States must ensure access to an effective remedy for violations of the right to education and for any human rights abuses by a private actor involved in education."⁶⁷ However, even after a decade of enactment of the RTE Act, there are certain challenges which still hinder students from exercising their right to free and inclusive education. Grievance redressal, an indispensable component of governance, has been found wanting and calls for additional focus from the state governments.

⁶⁶ Edu dept to hold another round of RTE admissions. (2019, September 4). Retrieved September 12,2019 from <https://www.hindustantimes.com/mumbai-news/edu-dept-to-hold-another-round-of-rte-admissions/story-631BqTYa6QqCqsAEmRCpXL.html>

⁶⁷ Abidjan Principles, Retrieved from: https://static1.squarespace.com/static/5c2d081daf2096648cc801da/t/5d5f200b80e7760001a9143a/1566515220020/D_esigned_A4_WEB_Abidjan+Principles__august2019.pdf

Implementation of the RTE Section 12(1)(c) provision involves several stages including school registration, student applications, lottery for allotment, post-admission student tracking and reimbursement of fees. Such interconnected processes can lead to a significant number of grievances, which might arise from both parents and schools. For example, errors in school location mapping can

directly lead to increased grievances from applicants who aspire to apply to schools not appearing in the option lists during the application process. These grievances need to be effectively addressed in a time bound manner to not only ensure streamlined processes but to also preserve the faith of all stakeholders involved in the process.

Part II : Status of Grievance Redressal across States

States have mainly used offline channels, helplines and, with varying degrees, online processes to deal with grievances associated with RTE 12(1)(c). The government, in a response made in Parliament ("Lok Sabha Unstarred Question No. 3169," 2018)⁶⁸, mentioned that Maharashtra, along with Rajasthan maintain an online grievance redressal system, while Gujarat, Assam and Uttarakhand operate toll-free helplines for the cause. It was said that for the other states, offline processes have been established. Experiences collated from the states, though, point to inefficiencies in the process and awareness issues such as the lack of clarity on the designated complaint-receiving authorities and the procedures for registering grievances thereof, still existing.

It has been seen that Bihar, Uttarakhand, Rajasthan and Karnataka have chalked out the role of their respective SCPCRs as the appellate authority in the grievance redressal mechanism of Section 12(1)(c), as mandated by the RTE Act. Most of the states do not maintain data on the number of complaints redressed, pending or escalated, in the public domain. In order to gauge the effectiveness of existing state-level grievance redressal systems, mechanisms by which aggrieved parties can track complaint

statuses and awareness of the expected resolution times, need to be analyzed. Such an analysis, however, is extremely difficult owing to lack of the requisite data.

Maharashtra has formulated a mechanism for handling complaints on the Maharashtra SCPCR website. The number of complaints related to 'child rights' (21 complaints in 2013-15⁶⁹) ("Maharashtra SCPCR - CPCR," n.d.) based on the mandate given to the Committee by the CPCR Act, those connected with RTE (28 complaints in the 2013-15 period⁷⁰) ("Maharashtra SCPCR - CPCR," n.d.) based on the responsibilities of SCPCR enumerated in the RTE Act and those taken up by the Commission suo moto (41 complaints in 2013-16 period⁷¹) ("Maharashtra SCPCR - CPCR," n.d.) have been uploaded on the website. However, in the complaint mechanisms catalogued on the Maharashtra SCPCR website, a common underlying thread was the complex rules and strict complaint formats which aggrieved parties have to adhere to in order to file grievances with the Commission. Since the Commission is mapped as the appellate authority, it needs to be evaluated as to whether such stringent rules may dissuade

⁶⁸ Lok Sabha Unstarred Question No. 3169. (2018, December 31). Retrieved from <http://164.100.24.220/loksabhaquestions/annex/16/AU3169.pdf>

⁶⁹ Maharashtra SCPCR - CPCR. (n.d.). Retrieved September 7, 2019, from <http://egov.co.in/CPCR.aspx>

⁷⁰ Maharashtra SCPCR - RTE. (n.d.). Retrieved September 7, 2019, from <http://egov.co.in/RTE.aspx>

⁷¹ Maharashtra SCPCR - Suo Moto. (n.d.). Retrieved September 7, 2019, from <http://egov.co.in/SUOMOTO.aspx>

parents from filing appeals, or lead to the abandonment of usage of such systems entirely.

Gujarat has established an SCPCR and appointed the requisite number of members and the Chairperson. It has also listed out different mediums which can be utilised by aggrieved parties to register their complaints, which include physical registration, through email, telephone/helpline, by means of the website and via a mobile app. In response to the Gujarat High Court's query dated April, 2019, the state government mentioned that all of over 500 of the receiving centres across Gujarat have grievance registers where parents can record their RTE related complaints. It also stated that District Education Officers and District Primary Education Officers have been instructed to resolve parents' complaints on a priority basis ("Gujarat High Court disposes PIL alleging poor RTE implementation," 2019).⁷²

[Grievance Redressal in Madhya Pradesh and Chhattisgarh, in particular](#)

During the period of 2010-16, the Madhya Pradesh SCPCR received 426 complaints out of which 128 were settled. The SCPCR informed in March, 2016 that the complaints were pending because the post of Chairperson, SCPCR was lying vacant since December, 2015. In accordance with Section 32 of the RTE Act, the School Education Department in August, 2011 issued directions to the Commissioner, Municipal Corporation; Chief Municipal Officers, Municipal Councils and Nagar Panchayats and Chief Executive Officer, Zilla Panchayat to set up a grievance cell, appoint a designated officer and maintain a register for the grievances. This information about the grievance cell was to be published in the local

⁷² Gujarat High Court disposes PIL alleging poor RTE implementation. (2019, April 27). Retrieved September 12, 2019, from <https://www.dnaindia.com/ahmedabad/report-gujarat-high-court-disposes-pil-alleging-poor-rte-implementation-2743541>

newspaper to generate awareness. However, the required actions were not taken by some districts according to the Audit Report by the CAG (Comptroller and Auditor General, Government of India, 2017).⁷³ The website of the Commission does not specify any process to be followed for grievances specifically related to Section 12(1)(c) under the RTE Act. It is not entirely clear from the information given on the website on the role played by the Commission with respect to such grievances. Moreover, there is no data available in the public domain regarding the number of such complaints received by the commission and the complaints which have been addressed or escalated.

To illustrate the type of queries that helplines address, we probe into the nature of over 10,000 calls addressed over a period of three months during the 2019 admissions cycle, in the states of Madhya Pradesh and Chhattisgarh, where Indus Action was involved in administering the helpline. These helplines were set-up to record complaints and provide support during the pre and post-admissions period. During the initial period, the majority of redressed calls (over 60 percent) revolved around the opening date of the application window, document requirements and the process to be followed for application. Despite concerted efforts from the government, information as simple and crucial as the date of commencement of applications did not reach the eligible parents. In the later phases of the application cycle, while grievances related to documents required and process of application still took precedence, parents also complained about technical issues with respect to the portal itself which were eventually escalated to the respective state

⁷³ Comptroller and Auditor General, Government of India. (2017). Performance Audit on Implementation of The Right of Children to Free and Compulsory Education Act, 2009. Madhya Pradesh, India. Retrieved from https://cag.gov.in/sites/default/files/audit_report_files/Report_No.5_of_2017_-_Performance_Audit_on_Implementation_of_the_Right_of_Children_to_Free_and_Compulsory_Education_Act%2C_2009_Government_of_Madhya_Pradesh.pdf



The state of Rajasthan this year achieved the highest number of applications filed under RTE Section 12(1)(c) in a single year. This was possible due to the extension of the application window by 1 week, which led to an additional 1.82 lakh application forms being submitted. Santhusta Foundation played a pivotal role by working with the Director, Commissioner and Deputy Commissioner of the Education department to enable the extension. According to The Times of India, 19,46,547 school choices were made by the 3,98,772 children who submitted applications this year, which is almost twice the number of last year.

(Source - Sridhar Neelam, CEO, Santhusta Foundation, Rajasthan)

authorities, and resolutions found. Chhattisgarh, showed a slightly different set of complaints. Among the received complaints, around 50 percent were related to school selection on the portal and the rest were focused around lottery, school location mapping and other technical problems related to the application portal.

Escalation of Grievances under RTE

The RTE Act extends multiple provisions to ensure that a child gets access to compulsory, quality education in a school within her vicinity, free of cost, without any form of discrimination. Making education a fundamental right with such multi-faceted provisions was a watershed moment for primary education in India. It was with this 'child-centric and implementation-based mindset' that a radically new feature was mandated by the RTE Act wherein the National Commission for Protection of Child Rights (NCPCR), an 'independent statutory body' (Haider, 2016)⁷⁴ was entrusted with monitoring and overseeing the fundamental right to education.

NCPCR is a statutory body established under the Commissions for Protection of Child Rights (CPCR) Act, 2005. The Act also puts down the provision for constitution of SCPCRs in the states. It falls under the administrative control of the Ministry of Women & Child Development, Government of India. The National and the State Commissions are mandated to ensure that all laws and policies are in conformity with the letter and spirit of Child Rights as embodied in the Constitution of India and in the UN Convention on the Rights of the Child. Chapter VI of the RTE Act mandates the NCPCR and SCPCRs to perform the following functions, in addition to its assigned functions under the

Commission for Protection of Child Rights (CPCR) Act, 2005:

- Examine and recommend effective measures to implement rights provided under the RTE Act
- Inquire into complaints related to a child's right to free and compulsory education.

The RTE Act deems the SCPCRs (or any other authority constituted to perform the same functions, as prescribed by the RTE Act) as the appellate authority. The aggrieved party can appeal to the SCPCR if it is not satisfied with the decision of the local authority (which has been mandated to redress the complaint within a period of three months, giving all involved parties a fair chance to be heard).

Section 32 of the RTE Act empowers parents to file any complaint, falling under the ambit of the Act, to a local authority in the state that has jurisdiction to receive and address such concerns. The local authority will decide the matter within three months of receiving the complaint and ensure that the aggrieved party and all related stakeholders are given reasonable opportunities to be heard. Under Section 31 of the RTE Act, the SCPCRs - or any such authority constituted by the state governments in the absence of SCPCR - are required to safeguard the rights of children as enshrined in the RTE Act and review any complaints which fall under the scope of the Act. A perusal of the details shared by the NCPCR on its website show that State Commission for the Protection of Child Rights have been constituted in every state, except in Jammu and Kashmir. However, only twenty states and Union Territories have duly appointed the Chairperson and all six members of the Commission and a total of nineteen states and three Union Territories have notified rules under the CPCR Act.

⁷⁴ Haider, J. F. (2016). Complaint Redressal and Awareness Generation: A two-pronged strategy for implementation of Right to Education Act, 2009 in India. *Research Journal of Educational Sciences*. Vol. 4(7), 9-17. Retrieved from http://www.isca.in/EDU_SCI/Archive/v4/i7/2.ISCA-RJeduS-2016-014.pdf

Case study : DCPCR

The online system for grievance redressal for RTE Section 12(1)(c) was established by the Department of Education (DoE) in 2016 in Delhi and as of April, 2018 it had received 2200 grievances. Grievances received by the DoE and over 150 more grievances received by the Delhi Government's Public Grievance Management System (PGMS) were analysed to understand the challenges faced by EWS and DG category parents in securing admissions for their children in private unaided schools under RTE 12(1)(c).

Among the analysed grievances, nearly a quarter of the grievances came from parents whose children, after winning the lottery, were denied admission as the family income was marginally greater than the eligibility limit of Rs. 1 lakh for the EWS category. A sizeable 41 percent of the complaints, reported schools rejecting admissions to lottery winners based on income limits. 24 percent of the complaints were related to the non-receipt of books and uniforms as well as increased distance to the allotted schools. Over 7 percent of the complaints stated that schools were not accepting valid government documents as proof during admissions.

Part III : Recommendations

‘Must haves’ in a robust grievance redressal system:

1. Existence of a grievance redressal mechanism (whether online or offline) must be widely publicised.
2. Responsibilities must be clearly mapped to officials at each step of the grievance redressal process : registration, investigation and redressal of grievances at the district/block/panchayat level. Information of designated officers must be made public.
3. A time-frame must be attached to redressal (and escalation) of grievances, with quicker turnaround times for issues related to school admission of the child. Grievances which are not resolved within a prescribed time-frame must be auto-escalated to the next level or to the SCPCR, as the case might be.
4. Database management must be thorough with easy to access public records on the number of complaints received, redressed, pending and escalated.
5. A copy of the complaint must be forwarded and recorded at the level of the SCPCR or the Right to Education Protection Authority (whichever independent body exists in the state).
6. All the parties involved in the dispute must be given a fair chance to be heard within the stipulated time-frame.
7. SCPCR of each state must formulate their own rules and the way it will discharge its function as the appellate authority.

‘Good to have’ in a robust grievance redressal system:

1. Presence of an online and offline system so that grievances can be registered conveniently using different modes: telephonic, web portal, mobile app, postal, and in-person.
2. Parents/guardians should be able to register complaints while maintaining anonymity.
3. A prescribed format to file complaints should be provided but may not mandated.
4. Contact details of the person responsible for redressing the complaint and of the person who will hear the appeal in case of non-redressal, should be provided.
5. In case a grievance is registered against a particular official, the investigation committee should involve a person who has seniority over the one implicated.
6. Grievances received should be analysed by the state governments and treated as feedback to improve the system.

Process flow of a centralised grievance redressal system (DCPCR, Government of Delhi, 2018)⁷⁵:

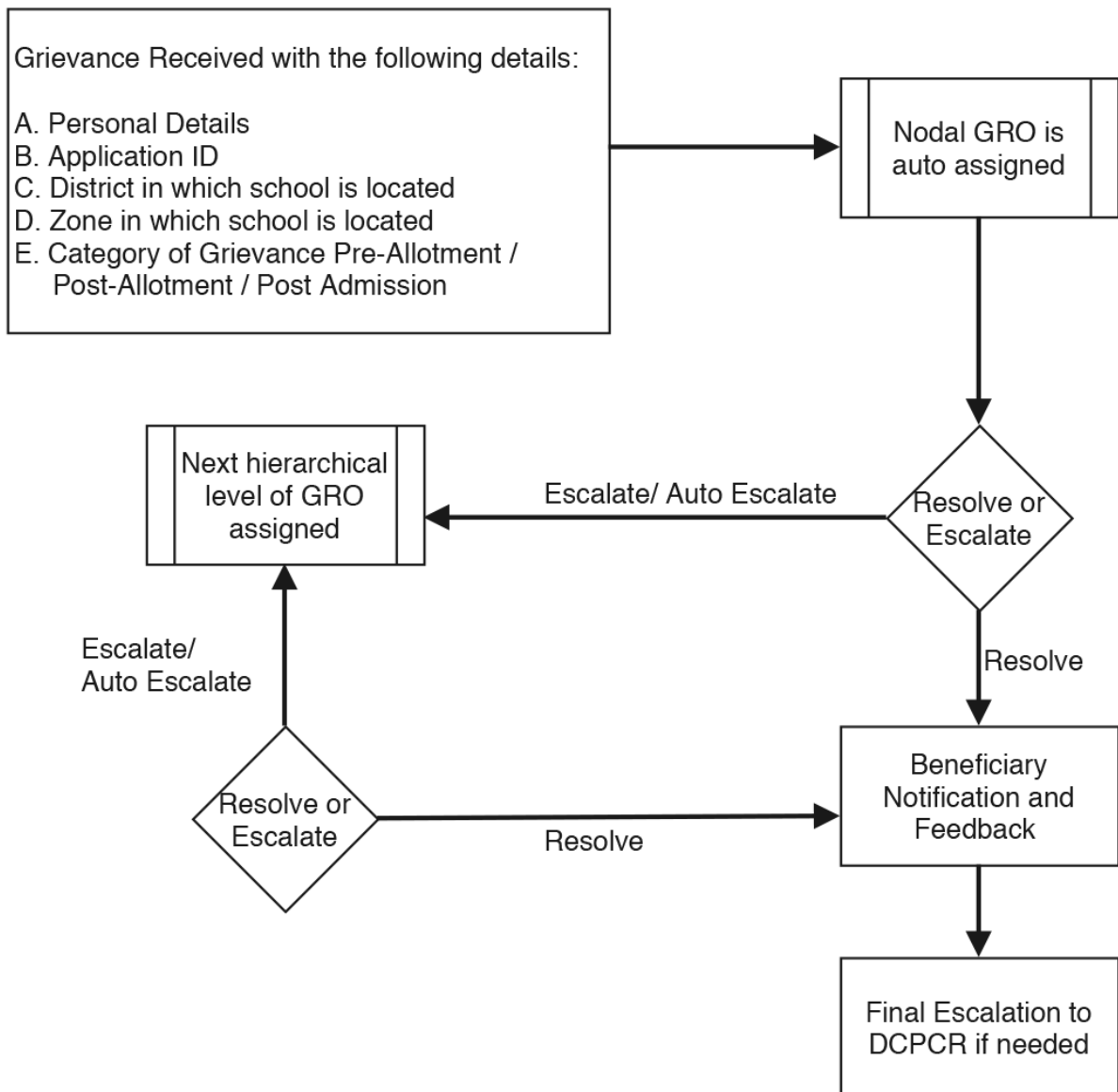
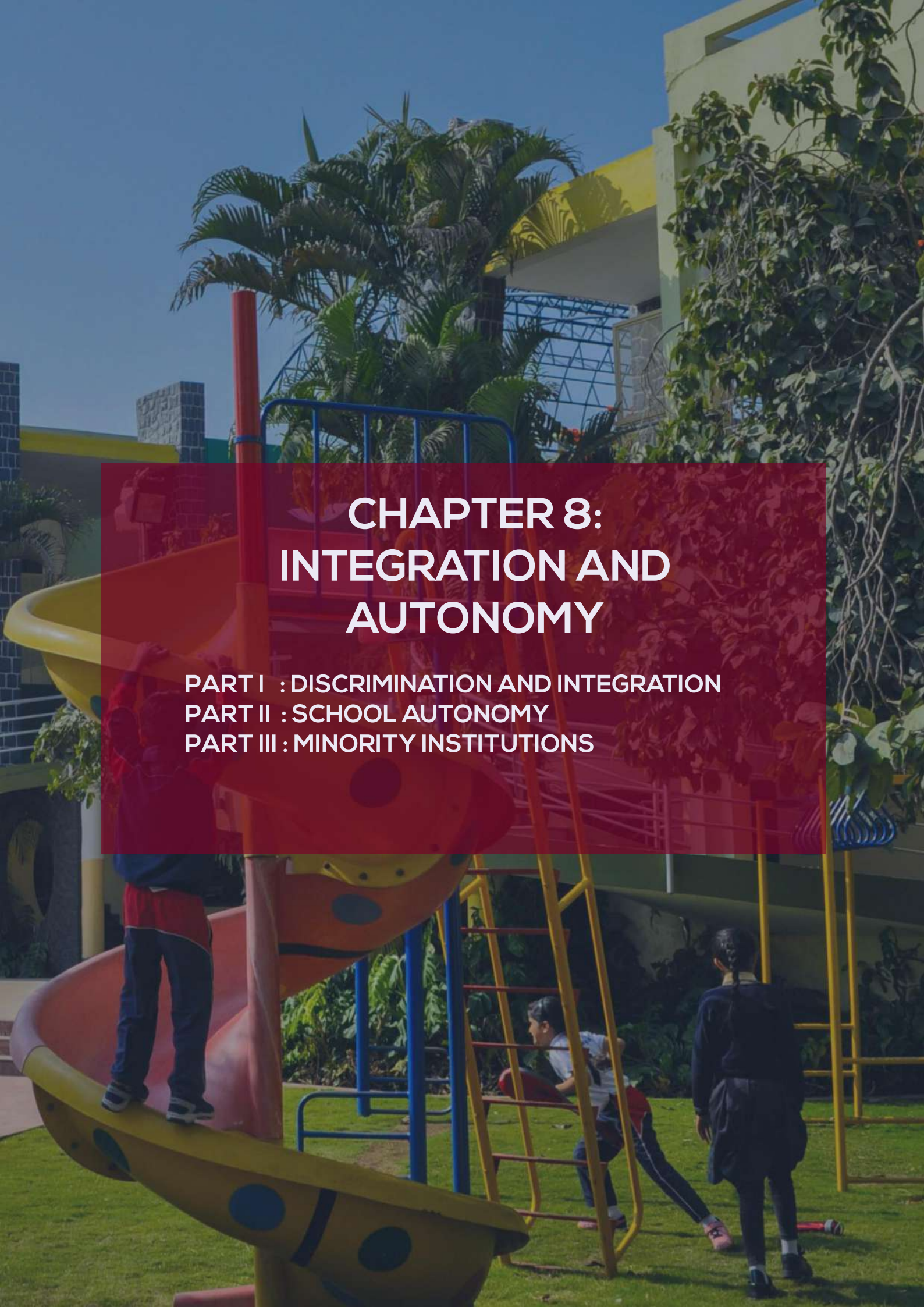


Figure 7.1 : Process flow of a centralised grievance redressal system

⁷⁵ DCPCR, Government of Delhi. (2018). Inclusive Classrooms: A Study of the Implementation of The Right to Education Section 12(1)(c) in Delhi, 2018. Retrieved from http://dcpcr.delhi.gov.in/wps/wcm/connect/doi_dcpcr/DCPCR/Publication/Inclusive+Classrooms



CHAPTER 8: INTEGRATION AND AUTONOMY

PART I : DISCRIMINATION AND INTEGRATION

PART II : SCHOOL AUTONOMY

PART III : MINORITY INSTITUTIONS

The Draft of the National Education Policy, 2019, mentions three key areas, due to which the implementation and desired effects of Section 12(1)(c) have not yet been fully achieved. They are: (i) The challenge of integration of students entering private schools, and facing discrimination; (ii) School autonomy in deciding their administrative and admissions processes; and (iii) The role of minority institutions with regards to schools wrongfully claiming minority status in order to be exempted from the policy.

Part I : Integration and Discrimination

There is no denying that ours is a stratified and segregated society. Stratification in Indian schools, on the basis of economic backgrounds, has been an enabler in perpetuating privilege, thus impeding access to private schools which are highly sought after by parents. 'Elite schools continue to ensure that their students live in a restricted universe, which does not reflect lived realities on environments characterized by wealth and poverty.'⁷⁶(Thapliyal 2016). Section 12(1)(c) has surfaced these privileges and gaps, and is a welcome step towards attenuating this gap. The need for a policy like Section 12(1)(c) has increased in recent times in order to bring the whole society together and make it inclusive.

The T. M. A. Pai Judgement⁷⁷ clearly presses on the need for India to look at education as an enabler of equal opportunities for all, irrespective of socio-economic and cultural distinctions. India stands at 147 out of 157 countries in its commitment to reducing inequality⁷⁸ – which is a very worrying situation

given that the country is home to 1.3 billion people, many of whom live in extreme poverty (Oxfam CRI Index, 2018). Segregation, stratification, income disparities and ever-growing inequalities are deep-rooted realities of the society we live in today. The way to bridge these deep-rooted realities is through building an inclusive society that embraces each person regardless of their background and recognizes each individual's right of maintaining the dignity of their life.

The argument of discrimination against the children from EWS/DG categories by the private schools, is not reflective of the failure of the policy, but moreover is the reflection of deep rooted segregation that exists in society. This reflection should be taken as an opportunity to make our classrooms more inclusive.

Section 8(c) of the RTE Act states that, "the appropriate Government shall – ensure that the child belonging to weaker section and the child belonging to disadvantaged group are not discriminated against and prevented from pursuing and completing elementary education on any grounds," Schools discriminating against a certain group of children should be treated under the law and efficient grievance redressal mechanisms should be placed for parents and students to highlight instances of discrimination.

⁷⁶ Thapliyal, N. (2016). Privatized rights, segregated childhoods: A critical Analysis of neoliberal education policy in India. Politics, Citizenship and Rights, 21-37.

⁷⁷ (n.d.). T.M.A.Pai Foundation & Ors vs State Of Karnataka & Ors on 31 Retrieved September 29, 2019, from <https://indiankanoon.org/doc/512761/>

⁷⁸ Commitment to Reducing Inequality Index 2018, Retrieved from: <https://oxfamlibrary.openrepository.com/bitstream/handle/10546/620553/rr-commitment-reducing-inequality-index-2018-091018-en.pdf>

A few studies that highlight the issue of discrimination and integration are:

- The National Commission for Protection of Child Rights (NCPCR) conducted a study in 2017 titled “A Study on Implementation of Section 12(1) (c) of RTE Act, 2009 in Delhi pertaining to Admission of Children from Disadvantaged Sections in Private Schools”.⁷⁹ The report found that , “Contrary to the views expressed by the School Principals regarding the issue of social differences among children, any kind of discriminating behaviour was not observed between the students from the general category and from EWS/DG category in more than 94% of the schools [out of a sample size of 44 schools, chosen for the study.]” It was noted that the lack of training to create opportunities for these children to effectively adjust in the school environment gives rise to such biased views amongst principals and teachers, that there exists discrimination against students from EWS and DG categories.
- Another study conducted by the Delhi Commission for Protection of Child Rights (DCPCR) in 2018⁸⁰ reported a decline in the “dropout rate from 8% in 2016-17 to 5.5% in 2017-18 due to better social inclusivity of children from EWS/DG categories.” 3% out of the 5.5% dropout rate were reported to be lottery dropouts. Out of the 2209 grievances reported as of April 2018, 7% parents reported grievances on mistreatment by school authorities.

⁷⁹ NCPCR. n.d. A Study on Implementation of Section 12(1) (c) of RTE Act, 2009 in Delhi pertaining to Admission of Children from Disadvantaged Sections in Private Schools. Retrieved from <http://ncpcr.gov.in/showfile.php?lang=1&level=1&sublinkid=1363&lid=1559>

⁸⁰ DCPCR, Government of Delhi. (2018). Inclusive Classrooms: A Study of the Implementation of The Right to Education Section 12(1)(c) in Delhi, 2018. Retrieved from http://dcpcr.delhi.gov.in/wps/wcm/connect/doi_dcpcr/DCPCR/Publication/Inclusive+Classrooms

- A research study, conducted in Karnataka, over one and a half years, affirms that children who are beneficiaries of the policy, show positive and statistically significant sense of ‘self efficacy’. (Kumar, 2017)⁸¹.
- Another study, by Gautam Rao, in Delhi sheds light on social behaviour patterns amongst children from high income groups and concludes that a mixed classroom has an arguably overall positive impact on social behaviours. (Rao, 2013).

In interactions that Indus Action has had with Principals and teachers of Private Schools, we have noted the following:

- In a recent interaction, on August 26th, 2019, with Mrs. Sumita Malik, Head of Early Years at Shiv Nadar School in Noida, Mrs. Malik shared how the school, in the initial days of implementation of Section 12(1)(c), had taken a stand in favour of EWS children despite a few parents’ expressing dissent against the mandate. She also shared about the initiatives taken by school to integrate the fee-paying children and non-fee paying children. For instance, the school, uses the term “neighbourhood children” instead of EWS children, has a birthday policy where the school ensures equal treatment to every child in the school and promotes collective and inclusive celebration. They also have various programs that encourage dialog with teachers, which exposes them to the realities of the children from economically weaker sections through community walks and home visits, initiatives to involve fee-paying parents and non-fee paying parents equally in events and exposing

⁸¹ (n.d.). Essays on school choice - ORA - Oxford University Research Retrieved September 22, 2019, from <https://ora.ox.ac.uk/objects/uuid:4d713003-6586-4d40-9b60-41c794544bed>

them to the terminologies used at school, and many more. She shared, “where there is a will, there is a way and when there is a problem you look for a solution.” That’s the approach taken by the school staff at Shiv Nadar School, Noida. They also have a dedicated Social Inclusion Cell, which is responsible for ideating on programs to integrate all children at school.

- In another recent interaction, on August 21, 2019, with the Principal of Ideal Radiant Public School, a Budget Income Private School in Shiv Vihar, Delhi, he shared how there is no discrimination and integration challenges in his school as most of the children come from a similar socio-economic background. In our interaction with a group of Grade 6-8 children in the school, we found that the children enrolled under Section 12(1)(c) were aware of their admission process and took pride in studying for free because of the policy’s mandate.
- In 2016, during a diagnostic research survey, conducted by Indus Action, with school principals and teachers to understand their in-classroom/school experience with Section 12(1)(c), one of the teachers from an Elite Private School in Delhi (name not mentioned for privacy)

Part II : School Autonomy

As described by the Minister of HRD in Parliament, “The Draft NEP report proposes for an education system built on the premises of quality and equity inter alia for building an equitable, just and humane society. The Draft NEP proposes that public and private schools will be regulated on the same criteria, benchmarks, and processes, emphasising public disclosure and transparency. While affirming

shared, “This is my third year, working with a mixed classroom. I have not experienced any special challenges until now. Challenges I have faced with EWS children are normal challenges that I have been facing with any child I have taught till now. In fact, 90% of the EWS children I have taught till now were naturally talented and bright. They used to pick the concepts quickly. Classroom environments are pretty much the same. A lot of this is because of me and my understanding of children and how I have managed to keep the environment neutral. Students do not know this differentiation and neither is this reflected in any kind of activity.”

There are multiple examples of private schools which are making dedicated efforts through their child support, parent support and community support initiatives, catering to the needs of EWS children specifically. The DCPCR report, 2018, mentions many small case studies of Elite Private Schools making efforts in this direction as well.

These interactions and examples imply that when schools recognize the differences in the backgrounds of children, understand where the gap lies, and then make efforts to bridge these gaps, Section 12(1)(c) will bring to fruition its complete potential.

the public good nature of education, it recognizes private philanthropic efforts for quality education, while protecting parents and communities from usurious commercial practices including arbitrary increase in fees.”⁸²

⁸² Lok Sabha Unstarred Question No. 1569 To Be Answered On 01.07.2019 Monitoring of Private Educational Institutions, Retrieved from <http://164.100.24.220/loksabhaquestions/annex/171/AU1569.pdf>

The Draft NEP mentions that while the intention of Section 12(1)(c) was to make private schools more diverse, forcing it on them, has not yielded the best results, and schools should thus be given the autonomy to do the 'right thing', and innovate, which would encourage best practices in schools.

A decade since the enactment of Section 12(1)(c), there are still multiple private schools not enrolling children under this provision in their schools. As per data available on UDISE over 20 lakh seats are available under the law every year.

Schools flouting regulations prescribed by the provision are regularly highlighted by the media. To mention a few,

- City Montessori School which is considered to be the world's largest school got much attention for violating the norms laid out under Section 12(1)(c). In 2015, the District Magistrate ordered for the admission of 31 students in one of the branches of the said school, which the school denied and challenged in court. After the intervention of the High Court, 13 out of 31 children were granted admission.⁸³
- Another school in Bengaluru, New Baldwin English Primary School at Dodda Banaswadi denied admissions to 16 children under RTE section 12(1)(c).⁸⁴
- Earlier this year, there were many instances of private schools denying admission to children who were admitted through Section 134-A, a state scheme in Haryana, on the pretext of having no vacant seats.⁸⁵

⁸³ (2015, July 17). In 54 districts, no EWS students admitted under RTE this session. Retrieved September 30, 2019, from <https://indianexpress.com/article/cities/lucknow/in-54-districts-no-ews-students-admitted-under-rte-this-session/>

⁸⁴ (2013, March 30). Admission under RTE hits age roadblock | Deccan Herald. Retrieved September 30, 2019, from <https://www.deccanherald.com/content/322639/admission-rte-hits-age-roadblock.html>

⁸⁵ (2019, June 13). Private schools deny admission to EWS students, taking 'no Retrieved September 30, 2019, from

To understand from the private schools on their views on autonomy, we interacted with an Elite Private School - Shiv Nadar School in Noida and a Budget Private School - Ideal Radiant Public School in Shiv Vihar, Delhi. It was clearly put out by both the schools that autonomy is not a concern for them and that they are invested in implementing this policy provisions to the best of their abilities.

As per our conversation with these two schools, the practical challenges were highlighted as the reasons for private schools refraining from implementing the policy's mandate. Both the private schools indicated towards the Education Department's failure to include the schools as thought partners thus leading into a lack of understanding of the reasons because of which private schools refrain from implementing Section 12(1)(c). A private school incurs a cost per child, varying based on the school's expenditures and the scale, which are not accounted for in the reimbursement processes. In an article dated May 21, 2018 in The Wire, a Principal of an Elite Private School in Delhi had also mentioned that the reimbursement does not even account for 15% of what the school spends on the child.

These challenges are clearly not the challenges posed to the autonomy or the intent of implementation of the private school, but are challenges that are posed due to process issues and the lack of robust structures that would support the implementation of the policy.

<https://www.tribuneindia.com/news/haryana/private-schools-deny-admission-to-ews-students-taking-no-seat-plea/786970.html>



Trisha from Chennai comes from a family where her mother is the only earning member of the family since her father is bed-ridden and cannot go to work. She secured admission to a school under RTE Section 12(1)(c), which ensured that her parents would not be burdened by the fees which the school would have otherwise charged. Her parents point to a noticeable change in her academic achievements and also mention that her English, as well as her handwriting have improved considerably. It is heartwarming to see that she has a diverse group of friends in school, who come from different economic backgrounds.

(Source - John Paul, Bhoomi, Tamil Nadu)

Part III : Minority Institution Debate

The Constitution of India, under Article 30(1), provides minorities, whether religious or linguistic, to establish and administer educational institutions of their choice. In, *In Re, The Kerala Education Bill, 1957* (AIR 958 SC 956 : 1959 SCR 995), the Supreme Court had observed that “*The object of Article 30 is to enable children of minorities to go out in the world fully equipped and this can be done by imparting general secular education to them at par with the other institutions*”. Further it was held that phrases “establish” and “administer” used in Article 30(1) are to be read conjunctively to mean that the institution in question is to have been established by a minority community and is being administered by the members of that community.

This Fundamental Right has been conferred on all educational institutions (primary schools, in this case) that are run by the Trust/Society of which the trustees/majority of the trustees belong to the religious minority. Moreover, as per the decision of the Supreme Court in the case of *Pramati Educational and Cultural Trust (Registered) And Others v. Union of India And Others, 2014*, these institutions are exempted from Section 12(1)(c) of the RTE Act and cannot be compelled to admit students belonging to economically and socially sections of society under the provision of the Act. However, this judgement is under debate, to the extent of aided minority institutions, as it places Article 30(1) over and above Article 21(A) and Article 29.

To be exempted from the provision, minority educational institutions have to obtain a ‘No Objection Certificate’ either from the National Commission for Minority Educational Institutions (NCMEI) or any appropriate authority appointed by the State or Central Government to grant such a certificate, as

provided under Section 10 and 11 of the National Commission for Minority Educational Institutions Act, 2004. Therefore, the right of establishing minority educational institutions, and hence obtaining exemption from the RTE Act, is subject to fulfilling certain criteria provided as per the guidelines put down by the Government of India for determination of minority status⁸⁶:

- The educational institution should be established by member/s of the religious minority community (as notified by the Government)
- It should be administered by member/s of the religious minority community
- It should be established primarily for the benefit of the minority community
- If it is run by a trust or a registered society, the majority of the trustees or members (respectively) should belong to the minority community.

Legal Discussions

Article 30 of the Constitution gives the right to minorities (both religious and linguistic) to establish and administer educational institutions of their choice. In order to objectively evaluate the debate centered around minority educational institutions and conferring minority status to educational institutions and their conflict with the RTE Act, it is essential to study the pertinent Judgements delivered by the Courts in this regard.

⁸⁶ Guidelines for determination of Minority Status - NCMEI, Retrieved from: <http://ncmei.gov.in/WriteReadData/LINKS/Guidelines-20-8-20197fb71c5f-3d17-47e2-a915-1ef12d839d49.pdf>

Year	Case	Summary of relevant portions of the judgement
2002	<i>T.M.A. Pai Foundation and Ors. vs State of Karnataka and Ors.</i> ⁸⁷	<ul style="list-style-type: none"> - The term 'minority' in Article 30 of the Constitution covers linguistic and religious minorities. Since the country was linguistically divided into States, these communities will be considered minorities with State as the unit. - Admission of students to unaided minority educational institutions (where there is no scope of merit based selection) cannot be regulated by the State, except for ensuring transparency in admissions, providing qualifications and minimum conditions for eligibility in the interest of academic standards. - Regulatory control over the day-to-day management and administration of unaided minority educational institutions by the State should be minimum as long as they are complying with the conditions of minority status. - In case of aided minority educational institutions, State can mandate the institution to ensure proper utilisation of the grant and fulfillment of the objectives of the grant without diluting the minority status of the educational institution. - It upholds the right to establish and administer educational institutions, guaranteed under the Constitution to all citizens under Articles 19(1)(g) and 26, and to minorities specifically under Article 30.
2005	<i>P.A.Inamdar and Ors. vs State of Maharashtra and Ors.</i> ⁸⁸	<ul style="list-style-type: none"> - Both minority unaided recognised as well as affiliated educational institutions are free to admit students belonging to any category they deem fit and the State will not interfere except for laying down conditions to ensure merit, excellence of education and preventing mal-administration. - The State cannot insist on private educational institutions which receive no aid from the State, to implement State's policy on reservation for granting admission on any criterion except merit. - In addition, state cannot enforce reservation policy or quota of admissions on non-minority unaided educational institutions as well. - Every minority educational institution can devise its own fee structure however there can be no profiteering, except to enable future expansions and such.
2012	<i>Society for Unaided Private Schools of Rajasthan vs Union of India.</i> ⁸⁹	<ul style="list-style-type: none"> - It upheld the constitutionality of Section 12(1)(c) of the RTE Act, which requires all schools, both state-funded and private to accept 25% intake of children from economically weaker and disadvantaged groups. - The Court held that RTE Act could not mandate private, minority schools to satisfy the 25% quota, since this would constitute a violation of the right of minority communities to establish and run private educational institutions as envisaged under the Constitution.

⁸⁷ (n.d.). T.M.A. Pai Foundation vs. State of Karnataka - Indian Kanoon. Retrieved September 30, 2019, from <https://indiankanoon.org/doc/512761/>

⁸⁸ P.A.Inamdar & Ors. vs State of Maharashtra & Ors. (Pdf, 190 KB)

⁸⁹ https://ncpcr.gov.in/show_img.php?fid=522

		<ul style="list-style-type: none"> - The Court reasoned that the RTE Act is ‘child centric and not institution centric’, hence provision of education to all children is a priority, irrespective of the fact that it might burden private schools. - The court reiterated the importance of Article 21A⁹⁰, and found that the burden on private schools to satisfy the quota was irrelevant in light of the importance of a child’s right to education.
2014	<i>Pramati Educational and Cultural Trust and Ors vs Union of India and Ors.</i> ⁹¹	<ul style="list-style-type: none"> - It upheld the constitutionality of the RTE Act and opined that the objectives of Articles 15(5)⁹² and 21A were to provide equal opportunities for students from weaker sections of the society and would not violate the private schools’ right under Article 19(1)(g)⁹³. - It ruled that the RTE Act is inapplicable for aided or unaided minority educational institutions.

Table 8.1 : Summary of important case judgements in the minority status debate

⁹⁰ Article 21A: Right to free and compulsory education for all children between 6 and 14 years of age

⁹¹ https://ncpcr.gov.in/show_img.php?fid=524

⁹² Article 15(5): Amendment inserted that allows the state to take away seats in Hindu educational institutions for SCs, STs, BCs and DGs

⁹³ Article 19(g): The right for every citizen to practise any profession, or to carry on any occupation, trade or business

The judgements in these prominent cases settled several controversies around establishing and running a minority educational institution.

A concern raised regarding Section 12(1)(c) has been with regard to an increase in the number of minority schools and consequent exemption from the purview of Section 12(1)(c). It is argued that the exemption has led to an increasing number of private schools seeking minority status to avoid the obligation of inducting children from EWS category under this provision (Sarin, Dongre, & Wad, 2017). The NEP draft concurs with this argument. According to the document, judicial exemption, to minority schools from implementing the Section 12(1)(c), may have been misused by certain schools. The basis of their argument is that these schools are claiming minority status 'while in reality they are not serving primarily that minority group, as reflected in the proportion of the schools' students in that minority group'.

A few schools have been reported in the media, to have acquired fake minority status certificates or of not adhering to the mandate even though their schools fell in the purview of RTE 12(1)(c).

- In an article dated May 31, 2019, Indian Express reported, "During the first round of RTE admissions for the academic year 2019-20 (in Ahmedabad), announced on May 6, as many as 2,090 students were allotted seats in 117 minority schools in Class I. Only 33 of these schools abided by the state government allotment under the RTE Act and admitted 378 students. The remaining schools did not possess the mandatory minority certificate but refused to admit the students. The state government then went to the Supreme Court. Among these schools, 17 of them

had applied for the National Commission for Minority Educational Institutions (NCMEI) certification. According to the Supreme Court's order, the remaining schools, which have not applied for the NCMEI certification, will have to admit students under the RTE Act for the 2019-20 academic year."⁹⁴

The Minority status is granted by National Commission for Minority Educational Institutions (NCMEI) to oversee the rights of minority educational institutions and National Commissioner for Linguistic Minorities (NCLM) investigates all matters relating to safeguards provided for the linguistic minorities.

Setting a minimum percentage of minority students within minority institutions is still an ongoing debate. The most recent one being in the state of Tamil Nadu wherein the minimum criteria that is to be fulfilled by minority educational institutions is 50% minimum admissions to the students from the minority community as claimed by the educational institution.⁹⁵

⁹⁴ (2019, May 31). Ahmedabad: Admit students under RTE, SC orders minority Retrieved September 30, 2019, from <https://indianexpress.com/article/cities/ahmedabad/ahmedabad-minority-schools-gujarat-supreme-court-of-india-ncmei-5757339/>

⁹⁵ Government Of India - National Commission For Minority Educational Institutions. Retrieved from: <http://ncmei.gov.in/WriteReadData/LINKS/e1bd5603d1-cd8b-4a4b-8969-f3597beb34fa99c0e645-cbca-4250-a6a8-f2df33e0cf21.pdf>

A student in a school uniform is writing on a chalkboard. The student has a long braid and is wearing a white shirt. The chalkboard has some faint writing on it. A red semi-transparent box is overlaid on the image, containing the chapter title and parts.

CHAPTER 9: LEGAL DEVELOPMENTS

**PART I : EXTENDING RTE TO CLASS 12
PART II : KARNATAKA CASE
PART III : PENDING LITIGATION**

Segregated schools and distinguished childhoods on the basis of socio-economic parameters limit the opportunities for a better future, thus perpetuating privilege and poverty. Private schools often become accessible only to the privileged class. As described in the initial sections of this report, we can realize the struggle associated with bringing on board the RTE Act in general, and Section 12(1)(c) in particular. In this last section, we present the legal road ahead with the policy, including extension of the RTE Act to 12th Standard, the ongoing Supreme Court case, related to the Karnataka High Court judgement, and the list of pending litigation with respect to Section 12(1)(c).

Part I : Extending RTE to Class 12

The first batch of children who had secured admissions in 2011 in private unaided schools under RTE Section 12(1)(c) would have now completed Class 8. Since the Act guarantees free education for children from six to fourteen years of age (till Class 8), it no longer covers these children who will now move to Class 9. These children face an uncertain future as they are being asked to pay the school fee or leave.

For children who have acclimatized themselves to the environment of a particular school, made friends, understood the system of teaching and learning there, to suddenly be left on the sidelines is very disheartening, and might lead to a large drop-outs from the system.

This issue was taken up by the NGO, Social Jurist, that filed a petition *W. P. (C) 4170/2019 Social Jurist, A Civil Rights Group v. Bharatiya Vidya Bhavan's Mehta Vidyalaya And Ors.* in the Delhi High Court through advocate Ashok Agarwal, seeking an amendment to the RTE Act, 2009, to provide free education to poor and disadvantaged children up to Class 12 in private unaided schools.

In response to this Public Interest Litigation, the Delhi High Court asked the Centre to examine

extension of the ambit of the Act. It issued a notice to the MHRD and the Delhi Government and directed them to respond to the plea filed by Social Jurist.⁹⁶ In the meanwhile, the High Court has ordered that schools cannot remove any child from their registers for the sole reason of non-payment of fees.

The Delhi government has mandated private unaided schools situated on public land to let students admitted under the RTE Act, to continue studies in the same school till Class 12.. However, the same benefit was not available to the EWS/DG students studying in private unaided schools not located on public land.⁹⁷

Apart from Delhi, the Department of Public Instruction, Government of Chhattisgarh, in 2019, has placed a proposal to the Cabinet for extension of age limit under the RTE Act till 18 years or Class 12. In its proposal, for reimbursements under section 12(2), the DPI has proposed a slightly higher

⁹⁶

<https://timesofindia.indiatimes.com/city/delhi/decide-on-ews-fee-issue-hc-tells-centre/articleshow/68802258.cms>

⁹⁷

<https://www.indiatoday.in/education-today/news/story/extending-rte-act-beyond-class-8-to-be-considered-after-new-govt-formed-hc-told-1531744-2019-05-22>

per-child-expenditure than what it provides for upper-primary admissions. The Cabinet is yet to clear this proposal, but a precedent will be set if it is cleared and becomes a law.^{98 99 100}

This issue is also linked to the larger debate around the definition of who is a child. It is the age group of 15-18 year olds, that get caught up in this ambiguity of 'child' vs 'minor'.¹⁰¹ While certain laws define an individual up to 18 years of age as a child, there are others like the RTE which only extend the definition up to 14 years. According to the Labour laws as well, post 14 years is when the person becomes eligible to work in most jobs (excluding hazardous ones).¹⁰² The Juvenile Justice (Care and Protection of Children) Act, 2015, on the other hand defines a child as a person who has not attained the age of 18 years.¹⁰³

It is essential to get clarity on the definition of a child, and align all the laws of the land accordingly.

The objective of setting the upper age limit as 14 years under RTE is with an understanding that a child who has finished elementary education would acquire basic reading, writing, and arithmetic skills. Beyond the provision of these skills, the state has to progressively

⁹⁸ (2019, June 13). Chhattisgarh announces free education till class 12 in Retrieved September 28, 2019, from <https://www.businessinsider.in/chhattisgarh-announces-free-education-till-class-12-in-government-schools/articleshow/69770178.cms>

⁹⁹ (n.d.). Now free education to students till HSSC - The Pioneer. Retrieved September 28, 2019, from <https://www.dailypioneer.com/2019/state-editions/now-free-education-to-students-till-hssc.html>

¹⁰⁰ (2019, June 27). Chhattisgarh Govt increased the scope of RTE ... - Patrika. Retrieved September 28, 2019, from <https://www.patrika.com/bilaspur-news/chhattisgarh-govt-increased-the-scope-of-rte-4761480/>

¹⁰¹ (2012, June 15). Who is a child? - The Hindu. Retrieved September 29, 2019, from <https://www.thehindu.com/news/national/who-is-a-child/article3528624.ece>

¹⁰² (1986, December 23). Child Labour (Prohibition and Regulation) Act, 1986. Retrieved September 29, 2019, from https://labour.gov.in/sites/default/files/act_3.pdf

¹⁰³ (2016, January 1). THE JUVENILE JUSTICE (CARE AND PROTECTION ... - CARA. Retrieved September 29, 2019, from <http://cara.nic.in/PDF/JJ%20act%202015.pdf>

extend to bring secondary and tertiary education under this Right, depending on the economic feasibility of the State. However, consistent ASER reports have shown that the increase in school going children did not result in children acquiring these basic skills. As per the latest ASER 2018¹⁰⁴ report: "By Class 8, the last year of compulsory schooling in India, children are expected not only to have mastered foundational skills but to have proceeded well beyond the basic stage. ASER 2018 data indicates that of all children enrolled in Class 8 in India, about 73% can read at least a Class 2 level text. This number is unchanged from 2016. Currently about 44% of all children in Class 8 can solve a 3 digit by 1-digit numerical division problem correctly".

In addition to this, children from Class 9 and above, who were admitted in private schools under Section 12(1)(c) will be asked to pay full tuition and other miscellaneous fees, often resulting in a financial burden on the family's income or run the risk of shifting schools leading to a change of environment, varied quality of education, psychological impact, etc. Thus, keeping the best interests of the child at the centre of the policy, and to truly achieve the objective behind free and compulsory elementary education, it would be appropriate for the Government to extend the applicability of RTE up to 18 years of age.

¹⁰⁴ <http://img.asercentre.org/docs/ASER%202018/Release%20Material/aser2018nationalfindings.pdf>



Vicky is an auto-rickshaw driver in Raipur, Chhattisgarh. He lives at home with his mother, wife and two children, Harsh and Vanshika, who study in the Class 3 and Nursery respectively. Vicky believes that people from disadvantaged backgrounds face several social barriers. He did not want others with a similar background to go through the same hardships he underwent to get his son enrolled in a private school.

In the makeshift office space in his home, he meets people, where he provides support by providing information to parents, filling applications forms on their behalf and contacting Indus Action when he does not have enough information. His intention is to help the families access information to apply so that they do not need to go to any government office or elsewhere, seeking basic information. During last year's campaign period, Vicky extended his support to the cause by using his auto-rickshaw to spread awareness about RTE 12(1)(c). Vicky has a dream to build a community of people who support each other at all times.

(Source - Madhuri Dhariwal, State Lead, Chhattisgarh)

Part II : Karnataka High Court's Judgement

Case Analysis of *Education Rights Trust v. Govt. of Karnataka*, 2019

(As observed by the High Court of Karnataka, decided on 31st May 2019 through Justice L. Narayana Swamy, and Justice P.S. Dinesh Kumar)

"Education is something which ought to be brought within the reach of everyone. The education department is not a department which can be treated on the basis of quid pro quo. Education ought to be cheapened in all possible ways and to the greatest possible extent" - Dr. B. R. Ambedkar¹⁰⁵

Facts and issue

- Just before the start of school admissions cycle, on 31st January 2019, the Government of Karnataka released a notification amending Rules 4 and 8 of the state RTE Rules, which define identification of neighbourhood schools and reimbursements for the purpose of admissions for EWS/DG categories under the 25% quota.
- Accordingly, where government or aided schools are available within neighbourhood limits, no unaided private schools is identified in the list of schools for admissions under the 25% quota.
- Furthermore, such unaided, private schools are also rendered ineligible to receive reimbursement for admissions under 25% quota.
- This notification was challenged in the High Court of Karnataka, before the division bench, for its legislative and constitutional validity. The High Court was quick to pronounce its judgement by 31st

May 2019, whereby the Division Bench upheld the validity of the changed rules.

The High Court has framed the core issue as, whether unaided schools should also be identified under the RTE Act. The issue framed is nothing but the question of shared statutory obligation placed on the private schools, under Section 12(1)(c) of the RTE Act.

This mandate of Section 12(1)(c) of the Act on unaided private schools has been upheld by the Supreme Court in the cases of *Society for Unaided Private Schools of Rajasthan v. Union of India* reported at (2012) 6 SCC 1, *TMA Pai Foundation v. State of Karnataka*, (2002) 8 SCC 481 and *Pramati Educational and Cultural Trust v. Union of India* (2014) 8 SCC 1. The Supreme Court has upheld that the provisions of Section 12(1)(c) are mandatorily enforceable against all private unaided schools, save only for unaided minority schools.

In the above-mentioned *Society for Unaided Private Schools of Rajasthan* case, the Supreme Court further observed as below:

"The 2009 Act seeks to remove all those barriers including financial and psychological barriers which a child belonging to the weaker section and disadvantaged group has to face while seeking admission. To put an obligation on the unaided non-minority schools to admit 25% children in Class I under Section 12(1)(c) cannot be termed as an unreasonable restriction. Such a law cannot be said to transgress any constitutional limitation.

...The object of the 2009 Act is to remove the barriers faced by a child who seeks admission to Class 1 and not to restrict the freedom under Article 19(1)(g). On reading T. M. A Pai Foundation and P. A. Inamdar in the proper

¹⁰⁵ Babasaheb Ambedkar: Writing and Speeches, Vol II, pp. 40-41

perspective, it becomes clear that the said principles have been applied in the context of professional/higher education where merit and excellence have to be given due weightage and which tests do not apply in cases where a child seeks admission to Class I and when the impugned Section 12(1)(c) seeks to remove the financial obstacle. Thus, if one reads the 2009 Act including Section 12(1)(c) in its application to unaided non-minority school(s), the same is saved as reasonable restriction under Article 19(6).¹⁰⁶

Details of the submissions made by the Government of Karnataka in the case are highlighted below. These submissions, as also accepted by the High Court of Karnataka, go against the majority judgements pronounced by the Supreme Court in the cases mentioned above.

Analysis of the main contentions of the state of Karnataka that were accepted by the High Court:

1st argument presented by the state: The combined reading of the provisions of Section 6 and Section 12(1)(c) of the Act, clearly indicates that where there are no neighbourhood schools, the State Government and Local Authorities are required to establish schools in such neighbourhood within three years; and till such time, the children belonging to weaker sections and disadvantaged groups ought to be admitted in such neighbourhood Private Aided/Unaided School.

Comments on the statutory interpretation:

This interpretation is a misconstruction of the statutes and the overall object of the Act as is mentioned in the (Statement of Objects and Reasons) of Bill, and as observed in the Society

¹⁰⁶ Society (2012) 6 SCC 1 paras. 32-35.

¹⁰⁷ case. The Ministry of Human Resources and Development has also issued a clarification note¹⁰⁸ with detailed and nuanced the rationale behind each and every section of the Act. This interpretation does not hold against the SOR attached with the Right of Free and Compulsory Education Bill, 2008 wherein the policy is clearly enunciated and is sought to be implemented by the operative provisions of the Act. Whatever discretion has been vested in the State Government under Section 38 must be exercised in the light of this policy.

Policy rationale

Given the resistance exerted from all sides on the implementation of this policy, it is worth reiterating the rationale provided by the MHRD for Section 12(1)(c), which can be seen in Appendix 5 of this report.

Concept and definition of Habitation and number of neighbourhood schools as in year 2008

It is interesting to note that as per the 8th All India School Education Survey 2008, when the Bill was passed by the Parliament, on an average there were more than 90% of habitations across the country, including SC/ST habitations,¹⁰⁹ with access to primary and upper primary schools within walking distance of 1km and 3kms respectively. In light of this data, one cannot assume that the Parliament in its wisdom and intention has accorded transitory and temporary objective to Section 12(1)(c) and the constitutional values it is set to achieve.

¹⁰⁷ *Supra*
¹⁰⁸

https://mhrd.gov.in/sites/upload_files/mhrd/files/upload_document/RTE_Section_wise_rationale_rev_0.pdf

¹⁰⁹ Habitations having 50% or more Scheduled Caste population have been termed as 'predominantly populated by Scheduled Castes' (SC Habitation). Similarly, for (ST Habitation)

- o 11,37,833 habitations in the country out of which 10,37,833 (91.21%) habitations have primary education facilities within walking distance of 1 km;
- o From the population point of view, 83,68,82,700 (96.19%) rural population have access to primary stage education facilities within walking distance of 1 km;
- o 1,65,884 (91.27%) habitations¹¹⁰ predominantly populated by SC, have primary stage education facilities within walking distance of 1 km;
- o 1,77,929 (89.64%) habitations¹¹¹ predominantly populated by ST have primary stage education facilities within walking distance of 1 km

Habitation, as defined in 7th & 8th AISES Reports:

- a. *A habitation is a distinct cluster of houses existing in a compact and contiguous manner; with a local name; and its population should not be less than 25 in plain areas and not less than 10 in hilly/desert/sparsely populated areas. In case there exists more than one such cluster of houses in a village, they will not be treated as separate habitations unless the convenient walking distance between them is more than 200 meters.*
- b. *Any habitation with population less than 25 in plain areas or with population less than 10 in hilly/desert/sparsely populated areas may not be given separate status of a habitation and its population be included in the nearest habitation of the same village. But this condition will not apply to a village with one habitation only.*
- c. *A village may have one or more than one habitation, except when it is a deserted/Bechirag village.*

¹¹⁰ Habitations having 50% or more Scheduled Caste population have been termed as 'predominantly populated by Scheduled Castes' (SC Habitation)

¹¹¹ Habitations having 50% or more Scheduled Tribe population have been termed as 'predominantly populated by Scheduled Tribe' (ST Habitation)

2nd argument presented by the state: Total as on March 2019, Rs. 1300/- crores have been paid to private schools under Section 12(1)(c) since year 2012. This fee, which is being paid to private schools, can be used to provide quality education in Government schools. Admission to Private Unaided Schools is not free since they are not under obligation to provide free education. State Governments need to reimburse the cost of education of these children admitted to Private Unaided Schools. Otherwise, the Government Schools and Local Authority Schools and Aided Schools, may not get sufficient number of children and since the date of coming into force of the RTE Act, there is considerable reduction in the admission of children to schools established by the government and local authorities and in many government schools, children have not been admitted or zero admissions have taken place since 2012-2013.

The government has resorted to repealing the policy, with one of the main reasons being to arrest the drop in enrolment in government schools. It is true that there has been a consistent rise in enrolments in private schools, not just in India but across the globe. This trend can be observed in the report Global Education Monitoring Report, 2017-18. The High Court has accepted the contentions put forth by the state, without complete regard of the statutory mandate in the RTE Act, which is actually an enabling Act to Article 21 A of the Constitution. Generally, the Courts have always observed that the State cannot abdicate its executive and financial responsibility to allocate funds for policies deriving from statutory and/or constitutional mandate.

On the flight of students from public to private schools:

- In a research study conducted by Akshara Foundation as reported in *Restructuring*

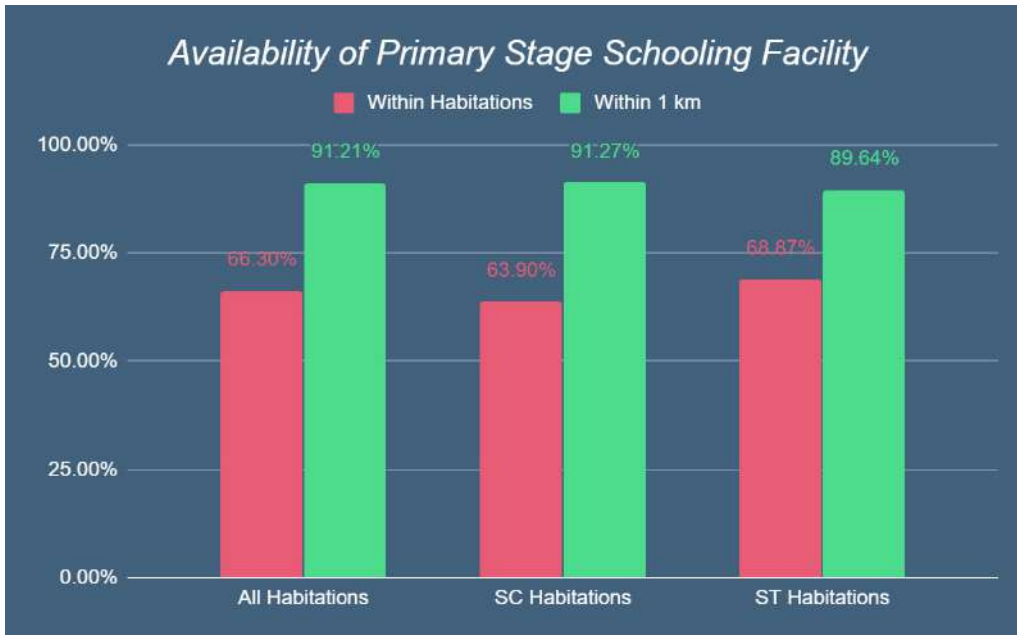


Figure 9.1: Availability of Primary Stage(I-V) Schooling Facility

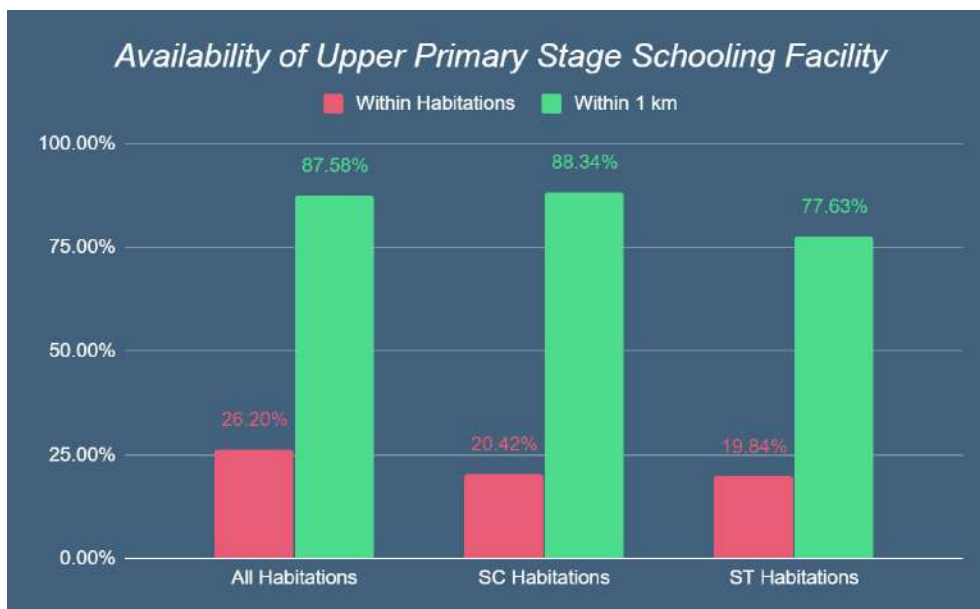


Figure 9.2: Availability of Upper Primary Stage (VI-VIII) Schooling Facility

government schools in Karnataka: Study of small schools and feasibility of school consolidation in Karnataka, 2018¹¹², drain from government schools is attributed to, among others:

“Gaps in schooling level: Lack of vertical integration across different levels such as primary and upper primary, upper primary and secondary levels result in the breaking of schooling levels and the flight of students outside the system. Schools which ensure continuity in schooling have higher students per class. In Karnataka government schools, the average enrolment per class in lower primary schools is 6.0, in higher primary schools, 17.6, and secondary schools with classes 1-10 have 36.7 students per class”

- In the Karnataka State Education Policy¹¹³, the reasons for the flight of students from public to private schools were mentioned along with corrective measures in the best interests of children.

“There is also a definite trend of students migrating from the government lower primary school (LPS) system towards private schools. There are several reasons for this:

- 1) Lack of attached facilities for pre-primary education at primary schools;
- 2) Multilevel teaching that is prevalent in government schools under the Nali-Kali programme which tends to be looked at unfavourably by parents;
- 3) Lack of options for children to study in English;
- 4) Perceived teacher absenteeism; and
- 5) Lack of adequate number of good

¹¹²(n.d.). Restructuring government schools in Karnataka - Akshara Retrieved September 29, 2019, from <https://akshara.org.in/wp-content/uploads/Restructuring-Government-Schools-report.pdf>

¹¹³ Karnataka Jnana Aayoga: Karnataka Knowledge Commission, Government of Karnataka, October 2016

quality government schools in urban areas. Physical migration of families from rural to urban areas is an important factor in the dropping enrolment in government schools in rural areas. As much as 86% of government and aided elementary schools (Classes 1-8) and 73% of high schools are concentrated in rural areas even though the rural population is now just 61%. Expansion of government capacity has not kept pace with change in demographics leading to a severe shortage of good quality government schools in urban areas.”

Few key indicators (budget and resources) to consider while de-constructing the narrative forwarded by the state of Karnataka:

- i. Share of funds allotted to private schools under Section 12(1)(c) is small when compared to the entire education department’s budget:
 - For academic year 2019-20, estimated budget approved for Elementary education is Rs. 1,605.89 crores, out of which the Central Government’s share is Rs. 697.29 crores and final approved outlay (Elementary, Secondary, Teacher Education) is Rs. 1,783.23 crores.
 - Compared to this, Rs. 148.59 crores are allotted to private schools under Section 12(1)(c) for 3,42,584 children, which is 9.25% of the approved elementary budget.
 - Spill over from previous year 2018-19 is Rs. 7.84 crores for elementary and Rs. 259.08 crores in total.
 - The share of reimbursements to private schools, under section 12(2) of RTE Act, of the total budget (elementary) is less than 10%, and is only 5% of the budgeted expenditure for education sector by the state (Rs. 27,943 crores).¹¹⁴ Furthermore, the education budget amounts to only

¹¹⁴https://www.prsindia.org/sites/default/files/budget_files/State%20Budget%20Analysis%20-%20Karnataka%202019-20%20for%20upload.pdf

1.75% of the GSDP (estimated Rs. 15,88,303 crores), which is far less than what is advocated nationally and internationally – 6% of GDP.

ii. Lack of adequate number of teachers in schools as per RTE norms:

- As recorded in the PAB minutes (2017-18) for the State of Karnataka, there were only 13% of upper primary schools which has subject teachers available as per RTE norms.¹¹⁵ This increased to 20% in the next year but only to fall back to 15% in the subsequent year¹¹⁶.

Conclusion

Thus, the future of inclusive education in the state of Karnataka rests with the appeal filed in the Supreme Court.¹¹⁷ Ensuring inclusive, equitable and good-quality education requires all actors to make a concerted effort to meet their responsibilities.¹¹⁸

¹¹⁵ PAB Minutes (2017-18) for the State of Karnataka: http://seshagun.gov.in/sites/default/files/2019-05/PAB_KA_2017_2018.pdf

¹¹⁶ PAB Minutes (2019-20) for the State of Karnataka http://seshagun.gov.in/sites/default/files/2019-07/KA_PAB_2019_2020.pdf

¹¹⁷ SLP(Civil) No. 18150/18836 of 2019

¹¹⁸ UNESCO - Global Education Monitoring Report (2017/8): Accountability in Education



The Chhattisgarh Department of Education, driven by Mr. Gaurav Dwivedi, IAS, and Mr. S.Prakash, IAS, Secretary and Director, respectively, is very active in trying to implement the policy to the best of its potential and provides full support for the implementation of ideas that will better the system. One example is the collection of historical data, of the exact names and details of all students in the state, who have gained admission under the policy, since its inception. Since Chhattisgarh is the first state to submit a proposal to extend RTE upto 12th standard (pending cabinet approval), this information collection is also helping gauge the number of students who might have dropped out of the private schools post Class 8.

Another leader in Chhattisgarh, is Mr. Jai Prakash Maurya, IAS (the then District Magistrate of Rajnandgaon district) who realized the need to find clarity in the process of RTE Section 12(1)(c) for all stakeholders involved. Under his direction, a workshop was held on Sunday, 24th of March, 2019, with around 800 participants, including nodal officers, private school representatives, members of the parent association, District Educational Officers (DEO), Assistant DEOs, Block Educational Officers from different blocks, as well as the staff of the education department. Mr. Maurya is a firm believer that health and education are the 2 drivers of society and if both of these function smoothly, then society can function at its best. (paraphrased from his speech at the workshop). He also said that as a society, we all have a responsibility to provide the best possible education to our children and help the entire system grow. We need to do this together, and cannot operate in silos. He pointed out that it is also the responsibility of the private schools, to provide an inclusive environment for the children in their schools, as citizens of a shared society.

(Source - Madhuri Dhariwal, State Lead, Chhattisgarh)

Part III : Pending Litigation with respect to RTE Section 12(1)(c)

There are various pending cases with respect to the Section 12(1)(c), in specific and the RTE Act in general::

1. In *Writ Petition (Civil) No. 514 of 2018: Dr. Sandeep vs Union of India*: PIL filed in the Supreme Court for effective implementation of Section 12(1)(c) of RTE Act, 2009 across the country. Though, in an earlier PIL in *W. P. (C) No. 49/2018 Akhil Delhi Prathmik Shikshak Sangh vs Union of India & Ors*, seeking similar directions for relief for better implementation of Section 12 along with the rest of the Act, the Supreme Court has disposed off vide order dated: 16-11-2018, wherein the Court held that “We are not inclined to interfere.” It is to be observed if the Supreme Court would intervene and take notice in this PIL.

2. In an appeal to the Supreme Court in *SLP (Civil) No. 18150 and 18836 of 2019*, arising out of the judgement dated 31st May 2019 by the High Court at Bengaluru in *WP. 8028/2019 with WP/7889/2019 Education Rights Trust Vs Government of Karnataka*. The Supreme Court has issued notice to the state government without granting interim stay on the impugned Government notification as prayed for by the appellants. Refer to Part II of Chapter 9 for detailed information and analysis.

3. Delhi High Court in *W.P.(C) 4170/2019 Social Jurist, A Civil Rights Group v. Bharatiya Vidya Bhavan’s Mehta Vidyalaya And Ors*. through advocate Ashok Agarwal, is currently hearing the issue of continuation of free education to the children currently admitted under the RTE Act, 2009 and the Delhi School Education Act, 1973 in private schools beyond Class 8. The High Court has asked the Central Government to consider this policy and to file a response. This case is key to determining the

future of this policy for beneficiary families, financial obligations of the State and Private schools, and the fate of the students.

4. Validity of Article 15(5): In *Union of India vs Sudha Tiwari (University Admissions)*: The Supreme Court considering an appeal filed against the order dated 11th February 2011 passed by the High Court at Allahabad in *Civil Misc. Writ Petition No.22511 of 2009 titled Sudha Tiwari vs. Union of India and others*, whereby the High Court has declared that the Constitution (Ninety-Third Amendment) Act 2005, in so far as it enables to provide reservation for admission to unaided educational institutions, is violative of the basic structure of the Constitution of India, as it has been held in *Ashoka Kumar Thakur vs. Union of India, (2008) 6 SCC 1*, and further, for the same reason, Section 4 of the *U.P. Admission to Educational Institutions (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 2006 (UP Act No. 23 of 2006)* is also declared to be invalid and ultra vires, to the extent it relates to providing reservations, in the admission of students to private unaided educational institutions in the State of UP.

However, just after a few months on 12th May 2011, the Supreme Court in *Indian Medical Association v. Union of India & Ors*, has upheld the validity of Article 15(5) of the Constitution and observed thus “147. *In light of the above, we hold that the claimed rights of non-minority educational institutions to admit students of their choice, would not only be a minor right, but if that were in fact a right, if exercised in full measure, that would be detrimental to the true nature of education as an occupation, damage the environment in which our students are taught the lessons of life, and imparted*

knowledge, and further also damage their ability to learn to deal with the diversity of India, and gain access to knowledge of its problems, so that they can appreciate how they can apply their formal knowledge in concrete social realities they will confront.

148. Consequently, given the absolute necessity of achieving the egalitarian and social justice goals that are implied by provisions of clause (5) of Article 15, and the urgency of such a requirement, we hold that they are not a violation of the basic structure, but in fact strengthen the basic structure of our constitution.”

5. Validity of Article 15(6) and Article 16(6): The 103rd Constitutional Amendment Act, 2019 provides upto 10% reservations in private and public educational institutions and public service for economically weaker sections, in addition to the existing reservation for SC/STs and OBCs. This 10% ceiling is independent of ceilings on existing reservations.

On 9 January 2019, the Parliament of India enacted the Constitution (One Hundred and Third Amendment) Act, 2019 amending Articles 15 and 16 of the Constitution, introducing 15(6) and 16(6). It received Presidential assent on 12 January 2019 and was published in the Gazette on the same day.

The amendment under Article 15(6) enables the State to make special provisions for the advancement of any economically weaker section of citizens, including reservations in educational institutions. It states that such reservation can be made in any educational institution, including private institutions, whether aided or unaided, except minority educational institutions covered under Article 30(1). The amendment’s validity is under challenge for violating equality and the basic structure of the Constitution in more than 20 petitions. In WP (C) 73/2019 and other

connected matters, issues framed by the Court are:

1. Is the addition of 10% reservation for Economically Weaker Sections unconstitutional, as it exceeds the 50% limit for reservations laid down in *Indra Sawhney v. Union of India*?
2. Can reservation be prescribed only on the basis of economic criteria, and not social and educational backwardness, under the constitutional scheme?

The Government has argued, inter alia, that: -

- the State has a duty to promote social equality and pursue the welfare of weaker sections of Indian society under Article 46 of the Constitution. The Constitutional Amendment is necessary; it provides fair and equal opportunity for a large number of impoverished Indians who are excluded from higher educational institutions and are not covered under existing reservation schemes.
- The Government-appointed Commission for Economically Backward Classes recommended reservations in education and government employment for all Below Poverty Line general category families (i.e. the economically backward category).
- The law has held economic criteria as a relevant factor in identifying social and educational backwardness. Therefore, it is a relevant factor for affirmative action mandates under the Constitution.
- Articles 15(6) and 16(6) are in conformity with the equality doctrine and therefore do not violate the Constitution’s basic structure doctrine. It must be shown that an amendment embodying a basic feature

alters the very identity of the Constitution in order to be struck down.

This case is currently being heard¹¹⁹ by a Three-Judge Bench of the Supreme Court.

The constitutional validity of Articles 15(5) and 15(6) to the extent of reservations for SC/ST/SEBCs and EWS in private, aided and unaided educational institutions, except for minority institutions, would be of considerable importance. Though the power of the State in enacting Section 12(1)(c) of the RTE Act, 2009 is found on a different constitutional right - Article 21-A (as mentioned below), the judicial finality to these Articles 15(5) and 15(6) will have a wide and far reaching impact on reservations in private educational institutions.

A Five-Judge Bench in *Pramati Educational & Cultural Trust v. Union of India (2014)*, in para 51, has upheld the validity of Section 12(1)(c) of the RTE Act, 2009 vis-a-vis rights under Article 19(1)(g), saved by a new power bestowed upon the State from Article 21-A, rather than from Article 15(5). This was done, because the Statement of Objects and Reasons attached to the Bill 2008, doesn't mention Article 15(5) but only Article 21-A. The Supreme court in this case had observed that *"a new power was made available to the State under Article 21-A of the Constitution, which is independent and different from the power of the State under clause (6) of Article 19, to make a law determining the manner in which it will discharge its obligation to provide free and compulsory education. By exercising this additional power, the State can by law impose admissions on private unaided schools and so long as the law made by the State in the exercise of this power under Article 21A of the Constitution is for the purpose of providing free and compulsory education to the children of*

¹¹⁹

<https://www.scoobserver.in/court-case/reservations-for-economically-weaker-sections/plain-english-petition-and-count-er-affidavit>

the age of 6 to 14 years and so long as such law forces admission of children of poorer, weaker and backward sections of the society to a small percentage of the seats in private educational institutions to achieve the constitutional goals of equality of opportunity and social justice set out in the Preamble of the Constitution, such a law would not be destructive of the right of the private unaided educational institutions under Article 19(1)(g) of the Constitution".

6. Applicability of the RTE Act to a school affiliated to the International Board of Education: Applicability of the RTE Act to a school affiliated to Cambridge Assessment International Education (CIE) is being considered in SLP(C) No. 018037/2019 *Master Rajpurohit Ridham Devichand v. Union of India*. If the Supreme Court applies "the RTE Act, 2009 is child-centric legislation" in this case, then all the schools similarly placed would be brought under one legislation.

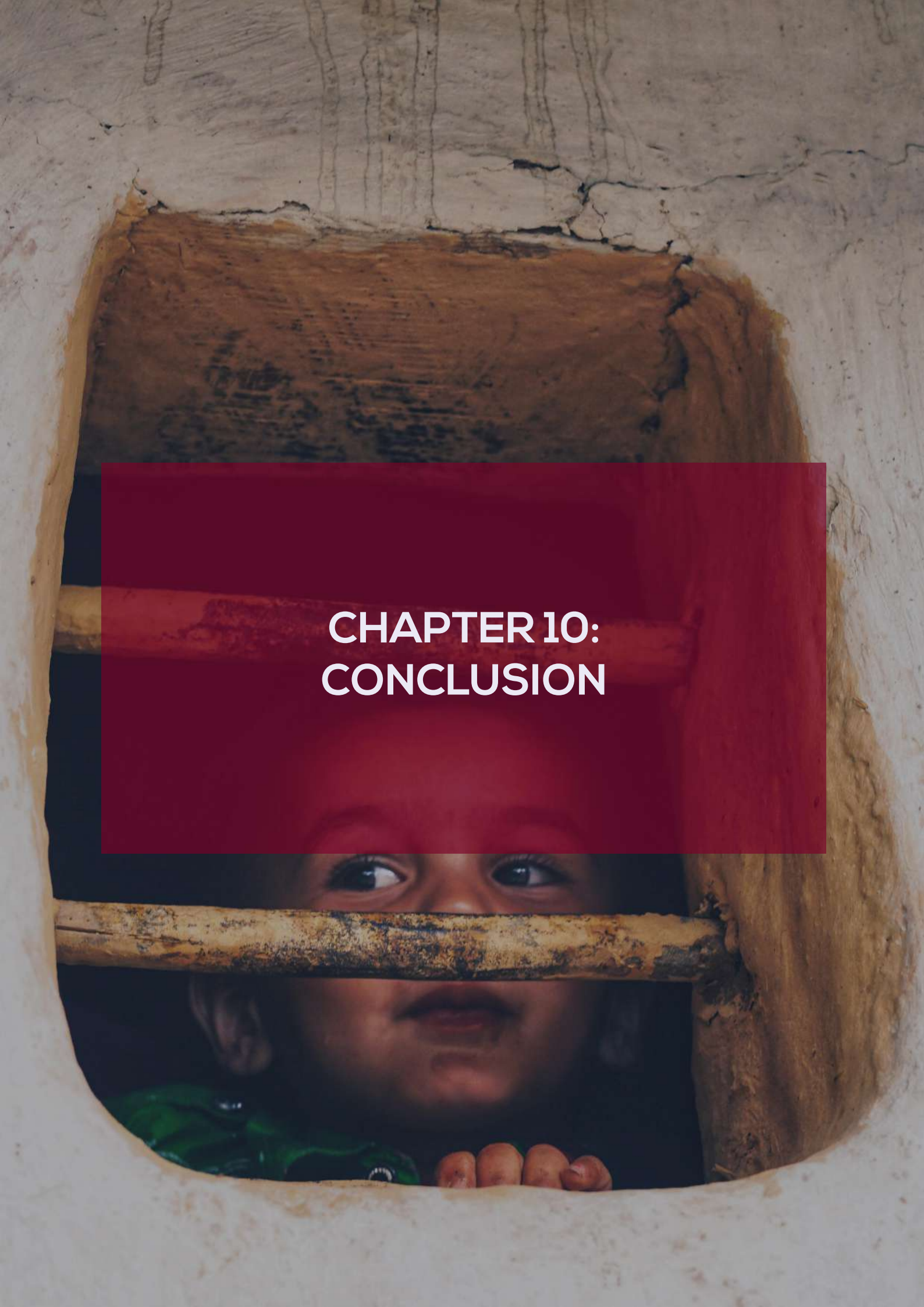
In a striking judgement pronounced by A. Muhamed Mustaque, J in *Mrs. Sobha George Adolfus vs State Of Kerala* on 10th June, 2015, the High Court of Kerala observed that protection under Article 30(1) is not available to a minority educational institution to hold back any child in any class upto elementary education. In this case, the child was held back from promotion to Class 7 for the academic year 2015-16. Thus, the Court held that denial of promotion upto elementary school level in minority schools also would amount to denial of fundamental rights of the child, as it would have a direct bearing on the right to life of the child guaranteed under Article 21 of the Constitution.

7. Criteria for Educational Institution to get Minority Status: In *Aligarh Muslim University v. Naresh Agarwal & Ors*, the Supreme Court on 12th February 2019 passed an order referring the question 3(a) which was formulated for an

answer in *T. M. A. Pai Foundation and Ors v. State of Karnataka and Ors*, to a seven-judge bench. “3(a) What are the indica for treating an educational institution as a minority educational institution? Would an institution be regarded as a minority educational institution because it was established by a person(s) belonging to a religious or linguistic minority or its being administered by a person(s) belonging to a religious or linguistic minority?”

8. The High Court of Tamil Nadu in W.P. 29293 of 2018 *The Principle v. State of Tamil Nadu & Ors*, is considering the validity of the Government Order G.O.(Ms.) No.65 dated 5th April 2018 issued by the School Education (MS) Department, wherein minimum criteria is set to be fulfilled by minority educational institution, 50% minimum admissions to the students from minority community as is claimed by the educational institution. The High Court, hearing a Miscellaneous application, has ordered interim stay for a period of three weeks on the application of this impugned order. The Court has further observed that “it is impossible for any minority institution to admit 50% of the students belonging to minority community”.

In view of *P. A. Inamdar* case, the minority educational institution is primarily for the benefit of a minority community. Sprinkling of the non-minority students in the student population of minority educational institutions is expected to be only peripheral either for generating additional financial source or for cultural courtesy. Thus, a substantive section of student population in minority educational institutions should belong to the minority population. In the context of commercialisation of education, an enquiry about composition of student population of minority educational institution will reveal whether the substantive peripheral formula that can be gathered from *P.A. Inamdar* is adequately complied with or whether minority educational institution is only a façade.

A photograph of a young child peering through a hole in a wall. The wall is made of light-colored, textured material, possibly plaster or mud. The hole is roughly rectangular and has a dark, possibly wooden or bamboo, frame. The child's face is visible through the hole, looking upwards and to the left. A large, semi-transparent red rectangle is overlaid on the image, covering the upper part of the child's face and the text. The text "CHAPTER 10: CONCLUSION" is written in white, bold, sans-serif font on the red background.

**CHAPTER 10:
CONCLUSION**

The current implementation of RTE Section 12(1)(c) poses multiple challenges as described in detail in this report. However, the act of law and remediation promises a brighter future for the policy provision. The success of implementation lies in the collaborative efforts of all the stakeholders involved. Every policy implementation process poses challenges. Unless these challenges are worked upon - reducing administrative gaps and evolving a robust mechanism for the effective functioning of the system, a policy cannot fulfill its intended purpose.

We are thus suggesting that the sustainability matrix and benchmarks be taken into consideration while making policy decisions about Section 12(1)(c). The mix of qualitative and quantitative metrics, are required to not only ensure sustainable implementation, but to ensure quality of policy delivery to the beneficiary as well.

While writing this report, we realized the dearth of data, literature, and research on multiple areas of the policy.

- Most of the research conducted is centred around select few cities, namely Delhi, Bengaluru, Hyderabad and Ahmedabad.
- There is no in-depth, longitudinal research on the impact of the policy on childrens' lives.
- Data relating to several state's seats, schools, applications, and admissions, is either missing, not updated or inadequate.
- There is an urgent need to triangulate data available from multiple government sources like U-DISE, PAB and reports from State RTE websites.

Section 12(1)(c) can potentially be called the Indian attempt towards desegregation (Juneja, 2016). The mandate has at least initiated conversations on social inclusion, if not brought

a massive change in the current scenario of our education system. Every policy takes time to mature and there are not enough research studies conducted that substantiate the impact of Section 12(1)(c). Therefore, judging the policy based on the inefficiencies in the process of implementation might not be justified.

The Statement of Objects and Reasons (SOR) attached to the Right of Children to Free and Compulsory Education Bill, 2008 had noted:

*"The Right of Children to Free and Compulsory Education Bill, 2008, is anchored in the belief that the values of equality, social justice and democracy and the creation of a just and humane society can be achieved only through provision of inclusive elementary education to all. Provision of free and compulsory education of satisfactory quality to children from disadvantaged and weaker sections is, therefore, not merely the responsibility of schools run or supported by the appropriate Governments, but also of schools which are not dependent on Government funds."*¹²⁰

The idea of inclusive schooling is also consistent with Constitutional values and ideals, especially with the ideals of fraternity, social justice and equality of opportunity.¹²¹ Admission of 25% children from socially and economically disadvantaged sections in the neighbourhood is not merely to provide avenues of quality education to poor and disadvantaged children. The larger objective is to provide a common place where children sit, eat and live together for at least eight years of their lives, cutting through distinctions of caste, class and gender in order to minimize such divisions in our society. The other objective is that the '75% children' who come from better endowed

120

https://mhrd.gov.in/sites/upload_files/mhrd/files/upload_documentoent/RTE_Section_wise_rationale_rev_0.pdf

121

https://mhrd.gov.in/sites/upload_files/mhrd/files/upload_documentoent/RTE_Section_wise_rationale_rev_0.pdf

families, enrich their learning via interactions with children from families who have not had similar opportunities, but are rich in knowledge systems allied to trade, craft, farming and other services, and that the pedagogic enrichment of the '75% children' is provided by such intermingling.¹²²

There is an explicit recognition of the fact that schools in general – be they owned and controlled by the government or private citizens – need to be governed by basic norms of quality and the principles enshrined in the Constitution including those of equality, inclusiveness and diversity. Since, the cost implications of private school education prohibit children belonging to certain backgrounds from accessing them, these schools tend to be “exclusive” and less diverse in the representation of children that study in them.

The idea behind the 25% admission for children from socially and economically disadvantaged sections in private schools is to seek redressal of this imbalance. It is also to ensure that the guarantee of free and compulsory education in a neighbourhood school does not completely exclude those children in the neighbourhood who cannot “afford” to study in such a school. Hence the principle of inclusiveness, to the extent possible, of the diversity that exists among children is the real purpose of the reservation. And it is with keeping this principle in mind that every effort must be made to ensure that its provision is adhered to in letter and spirit.¹²³

122

https://mhrd.gov.in/sites/upload_files/mhrd/files/upload_document/RTE_Section_wise_rationale_rev_0.pdf

¹²³ [35] SSA final report on RTE Act-2009 (Anil Bordia Committee), Retrieved from <http://vikaspedia.in/education/policies-and-schemes/right-to-education/RTESSAFinalReport.pdf>

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Appendix - 1 - Leading Cases on the role of State and Non-State actors wrt RTE

S. No	Title	Citation	Link	Summary
1	Pierce v. Society of Sisters of the Holy Names of Jesus and Mary	268 US 510 (1925)	http://caselaw.findlaw.com/us-supreme-court/268/510.html	The court determined that legislation proposed by the state to compel all children to attend public schools would interfere with the liberty of parents and guardians to choose a school for their children.
2	Scavella v. School Board of Dade County	363 So. 2d 1095 (1978)	http://law.justia.com/cases/florida/supreme-court/1978/50831-0.html	The court upheld the right to free public education and the right to equal protection under the law. This judgement supports the use of public funding to subsidise private schools while cautioning that this should only be done in extraordinary situations where no alternative is available. Further, the court in this case permits states to reasonably regulate and cap the amount of public funding going into private schools.
3	Zelman v. Simmons-Harris	No. 00-1751 (2002)	https://caselaw.findlaw.com/us-supreme-court/536/639.html	The Court clarified that in a voucher system offering participants a true choice of schools to attend including religious, non-religious and public schools, the preference for religious schools in a context where most of private schools are religious, cannot be considered an endorsement of such schools. The choice made by parents was distinguished from the state's endorsement of religious private schools.
4	Norwood v. Harrison	413 U.S. 455 (1973)	https://caselaw.findlaw.com/us-supreme-court/413/455.html	The court affirmed that while private schools may operate, there is no obligation to the state to provide assistance to private schools equivalent to the assistance provided to public schools. Further, where there is a constitutional provision prohibiting financial support to students in private schools that discriminate on the basis of race, the state could not provide resources (in this case textbooks) to private schools that discriminate on the basis of race.

5	Mohini Jain v. State of Karnataka and Others	1992 AIR 1858, SCR (3) 658 (1992)	https://indiankanoon.org/doc/40715/	The case upholds education as a fundamental right guaranteed under the Constitution of India and supports the fact that the state must not discriminate against learners regardless of circumstances such as low income. The Court emphasized that the State must ensure that the conditions of entry into institutions of learning are designed to promote equity and equality for all learners . The Court further stated that private institutions are agents of the State in the provision of education and therefore have a duty to ensure equal access to, and non-discrimination in the delivery of, higher education.
6	Society for Unaided Private Schools of Rajasthan v. Union of India and Another	(2012) 6 SCC, Writ Petition (C) No. 95 of 2010	https://indiankanoon.org/doc/154958944/	This case illustrates the obligations of the state to protect and fulfil the right to education, even when it is being delivered by private actors . It also upholds the responsibility of private actors to respect human rights, particularly the rights to equality and non-discrimination, and adhere to minimum educational standards established by the state . This case also upholds the rights of minority groups to establish their schools and protect their culture by determining that the school population quotas could not be enforced in private minority schools.
7	Joseph Njuguna & others v. George Gitau T/A Emmaus School & Another	Petition No. 391 of 2015	http://kenyalaw.org/caselaw/cases/view/119228/	This case reiterates principles of international human rights law which recognize states as the sole duty bearers in the realisation of the right to education . The obligation on private actors in education is to meet the standards set by the state to provide quality education .
8	Governing Body of Juma Masjid Primary School & Others v. Ahmed Asruff Essay & Others	CCT 29/10 (2011) ZACC 13; 2011 (8) BCLR 761 (CC)	http://www.saflii.org/za/za/cases/ZACC/2011/13.htm	The Constitutional Court of South Africa held that an eviction order obtained by an owner of private land on which a public school was located could not be enforced where it would impact students' right to basic education and the best interests of the child under the South African Constitution. The court was clear that the right to basic education is an immediately realizable right and under the South African Constitution non-State actors have a negative obligation to refrain from acts that would infringe on the right to education .

9	Ford v. Browning	No. SC08-1529 (2008)	http://caselaw.findlaw.com/fl-supreme-court/1286931.html	The case emphasised that complying with due process is imperative when proposing constitutional amendments that would impact public funding of education, and which may make it possible to transfer public funds into private educational institutions. Such proposed amendments must be accurately communicated to the voters and explicitly formed in the documents. Transfer of public funds into private educational institutions was considered to be an important decision that cannot be taken without taking all the system of democracy into account.
10	Gabriel Nyabola v. Attorney General & 2 Others	Petition 72 of 2012	http://kenyalaw.org/caselaw/cases/view/102170/	This case clarified that under international human rights law there is no obligation on the state to fund private schools. The provision of resources to public schools only does not amount to a violation of the right to education or discrimination against children in private schools. The distinction is acceptable as it seeks to achieve a legitimate aim: the progressive realisation of the right to education for all children.
11	Bush v. Holmes	No. SC04-2323 (2005)	https://caselaw.findlaw.com/fl-supreme-court/1102469.html	The decision in this case illuminates the extent of the state's responsibility of provision of free education. Parents' freedom to choose to send their children to private school was upheld but clarification was made on the implications of such choice - public funds could not be set aside to fund private education.
12	Forest Grove School District v. T. A.	557 U.S. 230 (2009)	https://caselaw.findlaw.com/us-supreme-court/557/230.html	The case illustrates the role of the State in ensuring access to appropriate education by all learners, including those with special needs. The reimbursement of costs for private education although not ideal, is an illustration of the responsibility the state retains to provide education to all learners even where its own institutions may lack the requisite capacity.
13	Environmental & Consumer Protection Foundation v. Delhi Administration and Others	(2011) 7 SCC 55	https://indiankanoon.org/doc/174516822/	This case illustrates the importance of adequate infrastructure for the enjoyment of the right to quality education. Education must be administered in a clean and safe environment for the right to education to be properly realized. In addition, this case reinforces the government's role in monitoring private actors who provide public services and ensuring their compliance with national legislation.
14	Bridge International Academies v. Attorney General, Uganda	Miscellaneous Cause No. 160 of 2016	http://globalinitiative-escr.org/wp-content/uploads/2016/11/Bridge-Court-Ruling-Uganda.pdf	This case confirms the State's obligation to protect the right to education, including by preventing abuse by private actors. The State has a duty to ensure the quality of education and training, and may close institutions that do not comply with the basic requirements and minimum standards as required by the law, provided that the State complies with due process requirements.

15	Githunguri Residents Association v. Cabinet Secretary - Ministry of Education, Attorney General & 5 others	Petition No.464 of 2013	http://kenyalaw.org/caselaw/cases/view/109726/	This ruling clarifies that free basic education should truly be free and no hidden, illegal costs should be charged in public schools.
16	Louisiana Federation of Teachers Louisiana	(Supreme Court of Louisiana; 2013)	https://www.ij.org/images/pdf_folder/school_choice/louisiana/la-sc-ruling_act2.pdf	The Supreme Court of Louisiana held that Louisiana's 'Minimum Foundation Program', which allocates educational funding to schools, could not be used to provide funding to private schools by way of a voucher programme. It ruled that to do so violated article VIII, section 13 of the Louisiana Constitution, which establishes how monies are to be allocated to public schools based on a formula adopted by the state board of education. The Court recognised that public resources constitutionally reserved for public schools cannot be allocated to private school, either directly or indirectly through a voucher programme. The Court avoided addressing the issue of whether the school voucher programme itself violated the right to education provisions of the Louisiana Constitution.

Appendix - 2 - ICESCR

30. Under article 13 (4), everyone, including non-nationals, has the liberty to establish and direct educational institutions. The liberty also extends to "bodies", i.e. legal persons or entities. It includes the right to establish and direct all types of educational institutions, including nurseries, universities and institutions for adult education. Given the principles of non-discrimination, equal opportunity and effective participation in society for all, the State has an obligation to ensure that the liberty set out in article 13 (4) does not lead to extreme disparities of educational opportunity for some groups in society.
32. The adoption of temporary special measures intended to bring about de facto equality for men and women and for disadvantaged groups is not a violation of the right to non-discrimination with regard to education, so long as such measures do not lead to the maintenance of unequal or separate standards for different groups, and provided they are not continued after the objectives for which they were taken have been achieved.
47. The obligation to respect requires States parties to avoid measures that hinder or prevent the enjoyment of the right to education. The obligation to protect requires States parties to take measures that prevent third parties from interfering with the enjoyment of the right to education. The obligation to fulfil (facilitate) requires States to take positive measures that enable and assist individuals and communities to enjoy the right to education. Finally, States parties have an obligation to fulfil (provide) the right to education. As a general rule, States parties are obliged to fulfil (provide) a specific right in the Covenant when an individual or group is unable, for reasons beyond their control, to realize the right themselves by the means at their disposal. However, the extent of this obligation is always subject to the text of the Covenant."

Article 3: the state will always act in the best interest of the child while taking into consideration the rights and duties of the guardians. The state shall ensure all institutions government or not adhere to this dictum.

Article 28: All children have the right to education. The state shall endeavour to provide free primary education, encourage different forms of secondary education, make higher forms of education accessible, make vocational information available and encourage school retention and prevent drop outs. School discipline should not be in violation of child rights.

Article 29: Child education should be geared towards the complete development of the child, in accordance with the child's cultural identity and human rights treaties, and to prepare the child for responsible life in society. It should not be detrimental to the environment. People may be allowed to establish educational institutes in accordance with these standards.

Article 30: Children of minority communities have the right to practise and adopt the culture, languages and traditions of their community.



Appendix - 3 - Application windows across states

State	Window start	Window end	Days
Bihar	January 1, 2019	February 28, 2019	58
Delhi	January 15, 2019	February 14, 2019	30
Chhattisgarh	March 1, 2019	April 15, 2019	45
Uttar Pradesh	March 1, 2019	April 5, 2019	35
Maharashtra	March 5, 2019	March 30, 2019	25
Rajasthan	March 5, 2019	March 25, 2019	20
Haryana	March 28, 2019	April 11, 2019	14
Gujarat	April 1, 2019	April 25, 2019	24
Madhya Pradesh	April 30, 2019	June 12, 2019	43
Tamil Nadu	April 30, 2019	May 18, 2019	18
Uttarakhand	May 1, 2019	June 5, 2019	35

Appendix - 4 - Understanding Game Theory

Matchmaking With the Help of Game Theory

In 2003, New York City changed its method for matching eighth graders to high schools with a system, called a deferred acceptance algorithm, that was designed by a team of professors, including one who later won a Nobel prize in economic science. The key feature was mutuality: Students submit a list of preferred schools in order, and schools prepare an ordered list of students whom they want or who meet their standards. After rounds of computer matching, schools and students are paired so that students get their highest-ranked school that also wants them. Here, in simplified form, is how it works. In this example, each school can take three students, although it can list more, and each student can list up to three choices.

		<p>Round 1</p> <p>Students' first choices are tentatively matched to schools that want them. The schools can reject them later if a student higher on the school's list can be matched in future rounds.</p>	<p>Round 2</p> <p>Unmatched students are paired with their next choice. School 1 accepts Student B, and rejects D, who is lower on its list.</p>	<p>Round 3</p> <p>Students G and I are matched to their third choices, and D is matched to a second choice. All matches are now set. Student J is unassigned. About 10 percent of New York City students end up unmatched and are assigned through additional rounds.</p>
Student choice accepted by school	Student choice rejected by school			

STUDENT	SCHOOL PREFERENCES	SCHOOL 1			SCHOOL 2			SCHOOL 3		
		A B C D	E F G D	A D H I	A B C D	E F G D	A D H I	A B C D	E F G D	A D H I
A	1 2 3	✓			✓			✓		
B	2 1		✗		✓			✓		
C	1 3 2	✓			✓			✓		
D	1 3 2	✓			✗					✓
E	3 2 1			✗		✓			✓	
F	1 2	✗				✓			✓	
G	1 3 2	✗					✗		✓	
H	3 2			✓			✓			✓
I	1 2 3	✗				✗				✓
J	2 1 3		✗		✗					✗

Sources: Academic papers, with assistance from Parag Pathak, Massachusetts Institute of Technology

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Image source: Tullis, T. (2014, December 05). How Game Theory Helped Improve New York City's High School Application Process. Retrieved from

<https://www.nytimes.com/2014/12/07/nyregion/how-game-theory-helped-improve-new-york-city-high-school-application-process.html>

Appendix - 5 - Rationale for Section 12(1)(c) as provided by MHRD

The idea that schooling should act as a means of social cohesion and inclusion is not new; it has been oft repeated. Inequitable and disparate schooling reinforces existing social and economic hierarchies, and promotes in the educated sections of society an indifference towards the plight of the poor.

The currently used term 'inclusive' education implies, as did earlier terms like 'common' and 'neighbourhood' schools, that children from different backgrounds and with varying interests and ability will achieve their highest potential if they study in a shared classroom environment. The idea of inclusive schooling is also consistent with Constitutional values and ideals, especially with the ideals of fraternity, social justice and equality of opportunity.

For children of socio-economically weaker backgrounds to feel at home in private schools, it is necessary that they form a substantial proportion or critical mass in the class they join. The relevant universe in which the proportion needs to be considered is the class/section. It is for this reason that the RTE Act provides for admission of 25% children from disadvantaged groups and weaker sections in class I only. This implies that these children cannot be pooled together in a separate section or afternoon shift. Any arrangement which segregates, or treats these children in a differentiated manner vis-à-vis the fee-paying children will be counter-productive.

The rationale for 25% lies in the fact that the composition of caste/class indicated in the Census is fairly representative of the composition of children who are seeking admission under this provision. As per Census 2001, SCs constitute 16.2%, and STs constitute 8.2% (total 24.4%) of the population. Further, the Tendulkar Committee, setup by the Planning Commission to measure poverty, has estimated the below poverty line (BPL) population to be 37.2%. It is a fact that much of the population that suffers economic deprivation also suffers from social disadvantage. Thus, taken together, the figure of 25% for admission of children from disadvantaged groups and weaker sections is considered reasonable. Any lower proportion would jeopardize the long-term goal of the policy which is to strengthen social cohesion and bring out the best human resource potential inherent in our society as a whole. A smaller proportion would serve only a token purpose, and it will run the serious risk of creating the feeling of alienation among the children belonging to disadvantaged groups and weaker sections. Their participation in classroom interaction will be neither strong nor sufficiently manifest to enrich the overall experiential learning taking place in any given subject area. Only a critical mass can play such a role.

The RTE Act provides for admission of 25% children from disadvantaged groups and weaker sections in Class I, not across the whole school. As children admitted to class I move to class II, new children will be admitted to class I, and so on till completion of 8 years of elementary education. The rationale for admission in class I only must be appreciated in human terms. Teachers who are used to a selective, homogeneous classroom environment cannot be expected to develop the required positive attitude and professional skills to deal with a diversified class overnight. The same applies to children. Children who have grown up to an age of nine or ten in a homogeneous or segregated environment have been socialized into a structure of norms and behaviour. They cannot be transformed on demand. Also, the overall school ethos cannot be expected to respond to a new policy in a positive manner all of a sudden. Education is indeed an act of faith and social engineering – but not quick-fix social engineering. In view of the fact that children take time to socialize and teachers take time to develop new attitudes and pedagogic skills, the RTE Act provides for admission of disadvantaged and poor children at the entry level, covering pre-school and Class I. With these children

moving up, and a new cohort of children entering pre-school and Class I in each successive year, the school will gradually have a more diverse population spread across all classes. Progression at this pace will allow children the opportunity to grow up together and create bonds: bonds that can survive social walls. Progression at this pace can allow the school to develop the professional capacity to respond to the intellectual and emotional needs of children from diverse backgrounds. Children who are younger than eight years of age are yet to develop a stable social identity. Their values are still forming, and their motivation to derive meaning from experience, both concrete and social is very strong. Therefore, it is a valid argument that the policy of mixing children from different socio-economic strata has the best chance of succeeding if it starts from the formative years of nursery/kindergarten and Class I. Diversity enhances learning and development, while segregation impoverishes the classroom environment of all schools, private or government.

Admission of 25% children from disadvantaged groups and weaker sections in the neighbourhood is not merely to provide avenues of quality education to poor and disadvantaged children. The larger objective is to provide a common place where children sit, eat and live together for at least eight years of their lives across caste, class and gender divides in order that it narrows down such divisions in our society. The other objective is that the 75% children who have been lucky to come from better endowed families, learn through their interaction with the children from families who have not had similar opportunities, but are rich in knowledge systems allied to trade, craft, farming and other services, and that the pedagogic enrichment of the 75% children is provided by such intermingling. This will of course require classroom practices, teacher training, etc. to constantly bring out these pedagogic practices, rather than merely make children from these two sections sit together. The often-voiced concern about how the 25% children from disadvantaged groups and weaker sections can cope in an environment where rich children exist can be resolved when the teaching learning process and teachers use these children as sources of knowledge so that their esteem and recognition go up and they begin to be treated as equals”



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