









6. Electronic marketing that, through electronic media, including radio, television and the Internet, targets students through schools.
7. Privatization, including private management of public schools, public charter schools and private, for-profit school involvement in voucher programs.
8. Fund-raising relationships between schools or school-affiliated volunteer groups, such as parent-teacher associations, and businesses to sell products or services in order to raise money for schools.

## 5. India's Desegregation Effort through Federal Law: Obstacles and Hopes

As stated earlier, India, never having had a common schooling system, could be said to have 'always' had private schools and therefore a system of segregated education for those who could afford fees as opposed to the default option of either no education or access, when it became available, to poorly funded state provided schools. Historically, education in India was the preserve of a few privileged males of certain high born castes. A somewhat formalized system of specialized education in particular skills by apprenticeship and residence with a proficient guru or 'ustaad' also existed. During British colonial rule, the government by and large restricted itself to the provision of primary education in areas under municipal corporations, and had left post- primary education since the 1880s to be provided by 'local native management' [12]. In course of time, these private schools providing upper primary and secondary schooling were granted aid from the government. In response to the growing demand for education, more fee charging schools, not necessarily aided, sprang up to provide education both in vernacular languages and in English

The perceptual frame of education prevailing at the time saw education as welfare, rather than a right of the child and a duty of the state. Historically in India, in the absence of adequate provisioning by government, there was a dependence on private schools, an acceptance of duality in schooling, and little use in general for democratic notions of universal education and common schooling.

In such a context, the mandate of a federal law in 2009 placing an obligation on private fee charging schools, requiring them to transform themselves from the 'exclusive' preserves of the privileged that they were, into egalitarian havens welcoming the forced inclusion of children from low socio economic groups was destined to meet with opposition.

Predictably, the clause mandating inclusion and the entire Act that carried this clause was met with

stiff opposition. It was challenged in the Supreme Court of India. Fortunately in the era of acceptance of education as a right not only under international law, but as a fundamental right in the Constitution of India since 2002, the validity of both the clause and the law was upheld in 2012 by the Supreme Court. Exemptions were however granted to unaided minority-managed schools as well as residential schools. These schools were absolved of responsibility of admitting 25 % of the poor. Later, in another case, all minority schools were also absolved of implementing the RTE Act.

This clause might have met with greater opposition and lesser support from the judiciary had the idea of inclusion of the poor in private schools not already been a legal obligation – although only on paper- for a vast majority of elite private schools who now occupied many acres of now prime real estate in the centre of cities. The land on which the schools stood had been granted to them free, but with the condition that they would also provide free education to the economically weaker sections as public service to those who would not be able to afford their fees.

It is this obligation, placed on the land contracts of these schools that paved the way both for the clause in the Federal Act and its defence by the Supreme Court half a century later.

Royal bequest of lands at the pleasure of the emperor, had been a tradition (called 'Nazul') in India since era of Mughal rule in India and was continued under the British Raj through rules known as the 'Nazul Land Rules'. After the Independence of India, a chapter in a land policy document of the 1950s, termed 'the social objectives of land policy' advocated the use of the lands in order to serve the social objectives of the Constitution of India [13]. Accordingly, the first Master Plan of Delhi (1962), which became the Model for city master plans all over the country incorporated in its provisions for allotment of government land to private schools which were being set up to carry some of the children who might otherwise have gone to government schools. In lieu of the land allotted to them, the schools were bound by a clause such as given below:

*'The –(society)----- shall ensure that the percentage of free ship from tuition fee as laid down under rules by the Delhi Administration from time to time is strictly complied. They will ensure admission to the students belonging to the weaker sections to the extent of 25% and grant free ship to them*

Private schools eager to take advantage of this largesse of the government in Prime locations of

major cities, came forward readily and the number of private schools increased manifold in each decade [14] (see Figure 1).

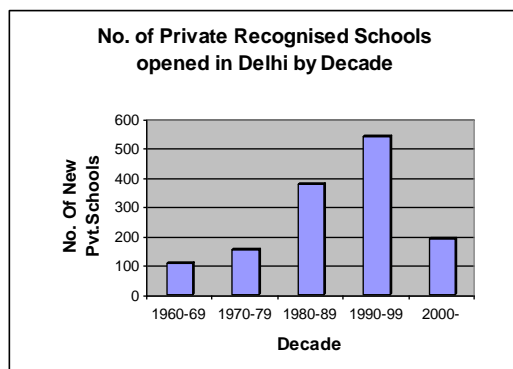


Figure 1: Number of Private Schools Opened In Delhi by Decade

It might be safe to say, that few private schools might have been able to afford to buy land in these cities at the prevailing rates. For example, a plot of 1.7 acres was granted by the Delhi Development Authority to a school in a prime location for an amount comparable to the registration fees being charged in the same year for a two bedroom apartment by the same development authority. An example of the advantage gained by these schools may be gauged by the example of a society which was allotted 1.7 acres of land in 1983 to set up a school in a very posh area of New Delhi, for a price equivalent to that being charged by the land development agency simply to file an application for a small two bedroom apartment. Similarly, another society received almost 4 acres of prime land in the city for less than the value of Rs. 20, 000/- or less than 300 dollars today. In contrast, recently about 2 acres was bought for a school in an outlying area of Delhi at an auction ten years ago, for the sum of almost Rs. 200 million.

### 5.1. Obligations disregarded by private schools

The obligations of private schools were largely disregarded by them, as was revealed by a case filed before the Delhi High Court. Thereafter the Comptroller and Auditor General of India also decided to conduct its own investigation into the matter of compliance of the schools, with their legal obligations towards the poor. The Comptroller and Auditor General's Report [15] for the period 1990-91/2003-4, found that about 381 societies were allotted land for schools. Of these they scrutinized only a quarter of the cases. Of the 90 cases they looked at, the CAG of India found that more than half of the societies allotted land were 'non functional'. Another 27 of them did not have the

funds to even pay the concessional amount for the land. Out of 90, only 24 of the societies that received land had set up schools that were functioning. Of these 24, 19 were not offering any free ship at all. Of the five that were, offering some free ship – none were giving 25 Percent as per their land lease clause obligation.

The same year, the Dept. of Education Delhi, also did an independent scrutiny of 109 cases of schools. Of these, 69 cases (63 %) of the schools were offering no free ships. In the remaining 40 schools the free ship offered ranged from 1 to 24%.

### 5.2. Acts of Omission by Government

While on the one hand, a government decades ago had put in place a law to ensure the social objectives of the Constitution of a new nation was supported by a land policy that sought to ensure inclusive education, other governments down the road ensured equally that that these plans did not come to fruition. For, it came to light from the same CAG report of 2005 that no mechanism existed for identifying breaches of allotment, and therefore no remedial action could take place.

Nor did schools subscribe whole heartedly to the ideology of service to the nation in the intentions behind setting them up. A Study [16] on self reports of 80 schools (All India), found for example that the memorandum of association of these schools (MOAs) do not mention any charitable purpose; and on the contrary, for every Rs. 100/- worth of concession received, schools spend Rs.27 on socially useful work, while 59 % of schools did not spend money on scholarships.

Such damning revelations about private schools, which had up to now enjoyed good press and were perceived as offering 'good education' coming upon the filing of the Social Jurist case came just in time to influence the development of the legislation following the amendment of the Constitution to make education a fundamental right. Through a process documented in detail elsewhere, [17] the clause mandating the social obligation of each private school to become a socially inclusive school found its way in to the India's historical legislation on free and compulsory education.

There remains no doubt that the RTE 2009 clause for reservation of 25 per cent seats in all private schools, was received enthusiastically by parents from economically weaker sections. This was evident in the huge rush for private schools among the DG and EWS categories. In the 2014-15 admissions in Delhi, 164,575 applications were received for 22616 reserved seats in 1186 schools when compared to 253,675 applications received for open 81198 seats in the same schools.

'State of the Nation: RTE Section 12 (1)(c)' on implementation in 2013-14, a study report by

‘Centre Square Foundation’, an NGO, The Indian Institute of Management, Ahmadabad, Accountability Initiatives, an NGO and Vidhi Legal Centre for Legal Policy reviewed the current systems and mechanisms for implementation on five dimensions – i) clarity in defining eligibility and documentation required, ii) process of information outreach/awareness, iii) selection process, iv) transparency in reimbursement provisions and reimbursement process, v) grievance mechanism and monitoring. The report found that systems and procedures are not in place and hence implementation gaps are enormous.

A group of civil society organizations (such as The Centre for Social Equity and Inclusion (CSEI) along with member organizations of Section 12 Watch Group and Delhi RTE Forum) which have been tracking implementation of Section 12 (1) (c) since 2011-12, conducted a Public Hearing in December 2015, in which 28 cases where parents faced barriers and constraints in availing this provision was documented across different districts. The different implementation gaps are summarized below:

**a) Additional Costs in School and Indebtedness.**

This was the most prevalent problem for most parents who found that additional costs for school supplies, uniforms extra tuition after school etc. cost more than they could afford and were forced into debt in order to keep the children in such schools. Parents also fear that they may not be able to meet the school costs and their children may have to drop out from school at a later time.

**b) Distance Criteria and Lack of Access to Private Schools.**

While private schools are allowed to draw their children in the general category from a distance of 6-8 kilometers, the provisions of the Act and guidelines are narrowly interpreted to deny admission to economically weaker children whose habitations are beyond a kilometer from the school. Thus the distance criteria become a passive exclusion factor for large numbers of children.

**c) Not complying with the Act in the admission of children with disabilities.**

Children with disabilities are given special provision under the Act and its rules, but the schools use excuses discouraging parents of children with disabilities from seeking admission saying that the school did not have the necessary support mechanism to teach the child.

**d) Lack of Transparency in the Admission Process.**

The admission procedure mandates that the lottery system be followed. Parents are to be informed to be

present for the lottery which will be overseen by a person designated by the department and the procedure video-recorded. However, this rule was followed more in its exception.

**e) Disrespect and Discrimination towards Parents.**

Parents report that discrimination and threats from the schools whose attitude tends to be that ‘we are obliging you by having your children in the school – you need to be thankful -what complaints can you have’. In some cases, they were also told that their children may face discrimination, being put in a corner if they did not comply with the demands of the school.

**f) Ineffective Grievance Redress.**

Parents from the DG and EWS communities have inherent difficulties in accessing the GR mechanism in terms of lack of social contact, lack of information, inability to follow up on complaints, time taken and support needed to use GR. Parents find it difficult to track the status of their on-line complaint and hence lose the opportunity to sort out the matter. Despite many complaints submitted to the department and on-line, the issues were not solved.

**g) Time, Cost and Hurdles in applying to multiple schools in the local area.**

Often parents are very keen to have their children admitted to private schools, and therefore they apply to all possible schools near them. They spend more than a month in tracking the application process. In addition, they have to get many certificates – SC/ST certificate, disability certificate, address proof, income certificate etc. Each of these certificates demand time and even costly.

**h) Not given entitlements.**

In the private schools, parents have to pay greater costs but have no access to any financial assistance from the state.

**i) Schools neglect the guidelines and circulars from the department regarding the provision.**

Neglect and violation of the guidelines in putting notice boards outside the schools, unwillingness to accept application forms from the parents, unwillingness to clarify norms to the parents are widely prevalent.

**j) Multiple Violations.**

Multiple factors often act together to create an extremely complex negative environment for the parents and children. On the other side the absence of any engagement with the private schools and teachers on understanding the issues of the disadvantaged children, lack of any pro-active

equity support mechanism in the school, the absence of any creative interface to build inclusion actions in the school act as barriers too.

The Indian attempt towards desegregation can be seen to at least puncture, if not dissolve the compartmentalization of the schools for the rich from the schools of the poor. In this effort India relied upon old legislation and used it to influence new national laws. The implementation of this law, although patchy and a work in progress, is at least causing a change in the discourse regarding the types of schools accessible to the poor. When one among them, given good teaching learning conditions, succeeds, it no doubt challenges deficiency theories and raises questions about the disparities among educational provisioning.

## 6. Can the Tide of Segregation be turned?

Although court judgments such as *Brown* have spelled a blow to segregation, the law could well provide protection for the rights of the children to education without discrimination. The Special Rapporteur, Right to Education reminded the International community that a number of court rulings worldwide have established that private providers of education are accountable to the State and to the public [8]. Quoting in his address to the UN human Rights Council, legal precedents in Nepal, South Africa, India, Columbia, and the United States, he stated that 'Public accountability of privatized schools and availability of remedies and recourse from their decisions should specifically be provided for by law.' (p.16). Regulations so framed should be, according to Singh, 'prescriptive, prohibitory and punitive' (p. 18).

Prescriptive regulations should establish clear conditions under which private operators may be permitted to operate. Prohibitive regulations are required in order to make illegal discriminatory practices, and any activities that deviate from the principles of provision of education as a social responsibility and a duty of the state. For profit school education should clearly be banned. Punitive regulations ensure compliance. Unless strong deterrents are spelled out, and strong action actually carried out against those who engaging in social injustice, fraud and corruption in education, regulations might have no meaning. Most of all there is need for good understanding and awareness of the harm that discriminatory and segregation can wield on the social fabric.

## 7. Conclusion

This paper, describes primarily the experience of implementation of a recent law in India which

strikes a blow, albeit a soft one, against school segregation. Even as it does so, it raises issues related to newer sources of segregation among schools such as privatization and commercialization. It raises again the issue of education as a public good, an issue which is topical once again following the Incheon Declaration in 2015.

It is ironic, that private schools in India which were supposed to be set up only for providing a public service appear to have forgotten that noble aim, and due to acts of omission of the government have, over the years have become accustomed over the course of fifty years to running their schools as they would. When suddenly such schools are reminded about their duty, they have acted to protect what they see as their privileges.

Parents from the weaker sections are on the other hand, becoming aware of the difference between the schools that the state provides, and the schools that they can get access to. After a few more years, when such parents will form a sizable number in the community of parents, they might become bold enough and unite across schools to claim more facilities and better treatment. Schools too might be forced to change and acknowledge that they need to become more sensitive to the economic diversity in the classroom.

This clause has attracted the attention of the world, and a large numbers of nongovernmental organizations have devoted themselves to ensuring that seats for the weaker sections are filled, that parents are assisted to enter and sustain their wards in such schools. Problems of the type mentioned in this paper, had probably played themselves out in USA when the first generation of black children were admitted by law into formerly segregated schools. This paper which spoke of India's experience of the use of law to fight school segregation also highlights the importance of regulatory frameworks centered on education as a public good.

A renewed discourse is gaining ground supporting the protection of school education from commercialization. The Incheon Declaration and its framework for implementation have reiterated the role of governments in protecting the rights of the child and for providing 12 years of free publicly funded education. The Un Special Rapporteur for Right to Education has devoted more than one of his reports to the related issues of Commercialization, Discrimination, and Privatization of education. Although powerful efforts have attempted, and greatly succeeded worldwide to convert schools into educational marketplaces, this paper, focusing on the use of the law to fight against school segregation suggests that there may yet be hope converting the vicious cycle of discrimination described in Myrdal's *An American Dilemma* into a virtuous cycle.



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