

AMENDING THE DELHI SCHOOL ACT AND RULES, 1973

**Working Paper
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AMENDING THE DELHI SCHOOL EDUCATION ACT, 1973

Abstract

This paper aims at identifying institutional gaps and constraints in the Delhi School Education Act and Rules, 1973 that affect the schooling system in Delhi. The paper briefly examines the quality of education in the three types of schools: Government schools, government aided schools and private schools on the basis of pass percentages and drop out rates. It further looks at the administrative set up of education in Delhi and evaluates its role.

Then follows a detailed analysis of the Delhi School Education Act and Rules, 1973¹ and subsequently comes the evaluation of institutional framework in education. The methodology adopted to evaluate the Act in light of the current scenario of education has been reference to judicial cases related to the Act and the Rules and direct interaction with the various players involved in the educational set up: the Directorate of Education, State Council of Educational Research and Training, Delhi School , Chairman of high powered Committee formed to amend the Act, eminent lawyers in education, school management, principals, teachers, students and parents.

The paper suggests amendments to the Act and the Rules to bring them in conformity with the present educational, social, political and economic developments and ideas while re-examining the role of the private sector in education. The amendments are recommended in order to address the objective of universal access and quality of education.

Introduction

The Delhi School Education Act was enacted more than three decades ago, in 1973. The primary objective of the Act was to provide for better organisation and development of school education in Delhi. Significant changes have taken place in the country in terms of economy and society, and thereby have made an impact on the education system as well.

The institutional framework of the school system can promote stagnation or growth, equal opportunity or discrimination, excellence or mediocrity, depending on how it is structured itself. The school support system is even more critical in the context of a globalising economy, where education is likely to become an increasingly more critical livelihood issue, and simultaneously more accessible as flexible. (Sharma, 2000)

Schools are complex enterprises indeed. Next to parenting, what takes place in a classroom between teacher and student may be the most subtle and difficult-to-evaluate

¹ The Delhi School Education Act, 1973 is hereinafter referred to as 'the Act' and the Delhi School Education Rules, 1973 as 'the Rules'.

relationship between adults and children in contemporary society. (Jencks, 1972) A well defined academic focus, decentralisation of power, a high level of professionalism, responsibility on part of the teachers and respect for discipline among students are characteristics of a successful schooling system.

There has been a rapid expansion in the size of Delhi and its population. There is an increasing inclination towards education in English medium public schools and there has been a rise in the number of private schools in Delhi. The Vats Committee that submitted its report in 2002 to suggest ways and means for improvement of quality of education in the schools run or aided by the Delhi Government conceded that there was an urgent need to revise the Act and the Rules in order to bring them in conformity with the changed circumstances:

The Delhi School Education Act, 1973 was enacted to provide better organisation and development of school education in Delhi. The Act came into force from 31 December 1973. It is obsolete now. It was enacted at a time when there were a few Government/ Government aided/ Private Schools and exclusive attention has been paid to the regulation of aided and non aided schools.

The Delhi School Education Act, 1973 was enacted by the Parliament and has remained unamended ever since it has been enacted thirty two years ago. It needs to incorporate the changes in the educational, economic, social and political equations of society that have occurred over this period of time. The amendments are recommended in order to address the objective of universal access and quality of education.

CHAPTER 1

Not just Education but Quality Education:

Quality is a relative perception and not something that can be absolutely defined. Educationists across the world have failed to reach a consensus over the definition of the quality in education. However, there are several ways of measuring quality in education. Providing quality education entails reforming the curriculum to incorporate a futuristic vision and ability to equip the youth of the nation with appropriate skills in tune with the needs of the industry that remains relevant, say, even 15 years from now. For a country that is aiming to grow at more than 8 per cent over the next decade, creation of a skilled labour force is of utmost importance

The National Advisory Committee, under Professor Yash Pal, in its report dated 15 July 1993, noted a major flaw in our education system as 'a lot is taught, but little is learnt or understood'. The abnormal size of a student's school bag aptly reflects unreasonable burden of studies. For long the system has focussed on knowledge as an end in itself.

In order to have a brief overview of quality of education in schools in Delhi we can consider two indicators: the pass percentages and drop out rates in schools.

Pass percentage reflects the proportion of children clearing the terminal examination that can be used to gauge the quality of education. At the primary level of education government schools follow a no-detention policy. The following tables show the pass percentages in government, government aided and private schools in Delhi in class Xth and XIIth examinations conducted by Central Board of Secondary Education.

The table below shows the performance of the various schools in Delhi in the examinations conducted by CBSE in 2004-2005.

SCHOOL	PASS PERCENTAGE	
	Secondary ²	Senior Secondary ³
Government	48.03	76.44
Government-Aided	58.27	75.25
Private/ Public	86.36	89.46

On a more detailed analysis it is observed that *'Only one out of two students appearing in the class X examination are able to pass the examination, which clearly exemplifies the dismal state of education in the government schools.'*⁴

² Banerjee, Rumu. 2005. Science perfect, English shaky. Times of India, 27 May

³ Times News Network, 2005. In City, 1178 Score Over 90%. Times of India, 24 May.

⁴ Mahajan, Kanika and Yugank Goyal. 2005. Working paper: school education in Delhi. Centre for Civil society.

Focussing on the performance of government schools, given are the drop out rates. Drop out rate indicates the number of students who are not promoted and/or repeat a class and are known as drop-outs.

According to the Municipal Corporation of Delhi, the dropout rates in the primary schools run by it are as follows:

Year	Dropout-total
1998-1999	7.57
1999-2000	7.64
2000-2001	4.12
2001-2002	6.34
2002-2003	5.34
2003-2004	9.02
2004-2005	10.8

Source: Deputy Education Officer, Department of Education, Municipal Corporation of Delhi, Kashmere Gate. Obtained on 1 June, 2005.

Considering the figure of 2004-5 the probability of a child passing class V in MCD run schools shall come out to be : $\{1-(0.108)\}^5$ which is close to 0.57. This implies that out of hundred students entering in class I of MCD run primary schools, only 57 are able to pass class V. The survival rate at secondary level is also alarming. According to the same PIL filed in the Delhi High Court⁵, out of every 100 children who enrol in the Government and local bodies in Delhi, only 14 make it to the class X level; out of which only 4 pass the class X level.

Despite free and compulsory education for children a wide gap persists between the government and private schools. Most of those who enroll in class I do not complete the 8 years of education. The indicators of academic performance like the pass percentages and the dropout rate put the government schools in bad light⁶

In the context of school effectiveness, the concept of quality is linked to the efficiency of teaching learning processes. Improvements in quality require “multi-pronged and strategic reforms” (Aggarwal, 2001) in teacher training; improvements in the facilities and infrastructure in schools; teachers’ motivation; and a change in the style of teaching to make it attractive to the students⁷. In practice, there exists a trade-off between quality and quantity that has adversely affected the education system in India as education has expanded in terms of quantity but deteriorated in terms of quality. There is an urgent need for a system of continuous and comprehensive evaluation to assess not just the quality of education imparted but also that retained in the minds of the students. Most importantly ‘let not the book be a burden’.

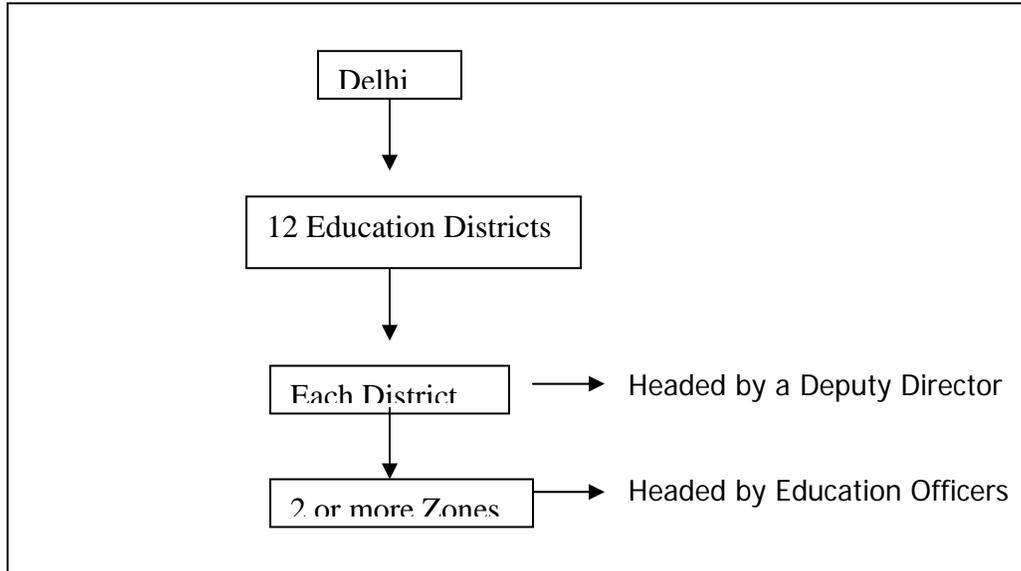
⁵ Social Jurist vs. Union of India and others C.W. 7027 of 2004 (Delhi High Court). Date of filing 19 November 2001, decided on 7 April 2003.

⁶ Mahajan, Kanika and Yugank Goyal. 2005. Working paper: school education in Delhi. Centre for Civil society.

⁷ Aggarwal Yash. 2001. Quality Concerns in Primary Education in India: Where is the Problem? NIEPA. Accessed at www.dpepmis.org/downloads/quality1.pdf on 2 June 2005

CHAPTER 2

The Administrative set up of education in Delhi:



The administrative head of education in Delhi is the Secretary (Education), assisted by the Joint Secretary in discharging his duties. The Director heads the Directorate of Education, which administers Government schools/ Aided Schools/Unaided Schools on behalf of the Delhi Government. There are 12 Education Districts, each headed by Deputy Directors. Each District has 2 or more zones headed by Educational officers. In all there are 28 zones in Delhi.

The education department is absolutely centralised at the Head Quarter level with respect to administrative and financial powers. As per the Vats Committee (2002) :“ it is too big for effective management of schools. Even basic data and information is not readily available with the department.”⁸ The Duggal Committee (1999) reiterated :

It was further stated (in a letter by the Directorate dated 8th June 1999) that the concerned Deputy Directors of Education were monitoring the compliance of the conditions of recognition, but at the same time confessed that the Directorate had, "no mechanism to execute the task of comprehensive annual inspections of schools" and the re-auditing of the accounts of the schools' for checking commercialization, "unless there was a complaint", and further added that "On our own, we do not make a conscious attempt to ensure that it is complying with the conditions of recognition". It was further stated that "annual inspections were unfortunately not an annual affair", and that for want of requisite

⁸ Vats Committee. 2002. Report of committee on improvement in quality of education..Government of NCT Delhi.

infrastructure and manpower they have been disabled from performing this statutory function. Appalling revelations indeed!⁹

The needs of different schools located in various areas of Delhi very often varies and each demands specific initiatives and inputs and do not receive due attention if planned for centrally. It is not just the schools but also the students and parents whose aspirations fall by the way side, down this convoluted path of centralised decision making. It should be clarified that the particular people involved in the administrative set up are to be blamed, instead the flaws inherent in the set up are completely institutional. Decentralisation, greater professionalism and autonomy of schools is discussed in greater detail in the concluding portion of the paper.

⁹ Duggal committee Report.1999.

CHAPTER 3

ANALYSING THE DELHI SCHOOL EDUCATION ACT AND RULES, 1973

3.1 Substantive and Procedural Aspect of the Act: This part of the paper covers the analysis of those provisions of the Delhi School Education Act, 1973 that deal with providing better organisation and development of school education as mentioned at the first chapter of the Act.

3.1.1 Scope of the Act:

a. The Act in its present form has left government schools totally out of its ambit. Save a few provisions such as those related to the admission, fee, inspection and regulation of schools, the whole act caters to only private schools. The Vats Committee Report (2002) comments: " There seems to be a general neglect in both the Act and the Rules, of the Government Schools and exclusive attention has been paid to the regulation of aided and non aided schools." The scope of Act should be expanded in order to bring under its purview all the types of schools, Government/ MCD managed, Government aided and private unaided schools.

b. Provision of education at the Pre-Primary level (Pre-Nursery or Preparatory schools) has been entirely ignored in The Act. Pre-Primary education has, in recent years, assumed substantial importance. There has been a proliferation in the number of private Pre-Primary Schools providing education to children less than 5 years of age and therefore needs to be monitored to ensure that the children with a young and impressionable minds are handled with due care. Government of Delhi by order dated 23.03.1999 directed "no students shall be admitted in pre-primary classes by what so ever name it may be called unless he has attained the age of 4 years as on 30th September of the acadamic year in which admission is sought." (*Social Jurist v. Kendriya Vidyalaya Sangathan*)¹⁰. Unfortunately these directions are being openly flouted by the schools that admit children below the age of 4 years.

Appropriate steps must therefore be taken to regulate functioning of these 'early childhood education institutions'. Norms regarding accommodation, staff apparatus, play materials must be laid down for recognition of these schools to ensure that these institutions do not perpetuate violence or a heavy dose of 'over-education'. The practice of holding tests and interviews for admissions to nursery class should be abolished (Yash Pal Committee, 1993).

3.1.2 Establishment and Management of schools:

¹⁰ Social Jurist v. Kendriya Vidyalaya Sangathan CWP 1984 Del(2003)

Registration of schools is an extremely essential provision completely overlooked by The Act. Consequently there is no account of the number of unrecognised schools functioning in Delhi. Unauthorised schools continue to proliferate in the city, despite the fact that school cannot run without obtaining the permission of the Director of Education.

The consequences of absence of any provisions to monitor these unrecognised schools is borne by the children, their parents and the teachers. They are being exploited *in perpetuum* by these schools that provide dubious quality education in congested and overcrowded premises that violate minimum safety rules and do not provide basic amenities such as potable water, toilets and first aid despite levying high fees. The teachers employed are unqualified and under paid. These schools have no playgrounds or libraries and do not observe normal working hours and days as observed by government and other recognised schools.

A large number of schools deliberately do not go for recognition as they would be no longer under any obligation to comply with the various statutory regulations like payment of salaries to the staff at par with those of Government school employees. (*Social Jurist v. Kendriya Vidyalaya Sangathan*)¹¹. Children passing out of these schools are denied admission by recognised private schools and government schools as they do not possess a valid transfer certificate. But in the absence of proper regulation parallel and private systems of education continue to thrive in the city.

There have been instances of unrecognised 'feeder schools' run by aided and unaided recognised private schools. Schools that are not authorised to hold senior secondary classes admit students and run classes for standard XI and XII regularly and later send them to other recognised schools to appear in public examinations. It has been estimated that the tuition fee charged is three-times the amount specified by the Department of Education.¹²

3.1.3 Penalty of withdrawal of recognition

"The Director, however, finds himself under constraint to act, as at present, for the reason that the only penal action provided against recalcitrant schools is withdrawal of recognition (Rule 56 of Delhi School Education Rules), which according to him was likely to entail drastic consequences for the students, such as closure of a school." (Duggal Committee Report, 1999).

There needs to be a system of monetary penalty or penalty of imprisonment of the manager, present in the Act, should be extended to replace the penalty of

¹¹ Social Jurist v. Kendriya Vidyalaya Sangathan, CWP 1984 DEL(2003)

¹² Kak, Smriti. 2001. Capital business in teaching shops: Schools flout norms, hold unauthorised classes. Tribune, 10 November. Accessed on 30 June 2005. Available at <http://www.tribuneindia.com/2001/20011110/ncr1.htm>. Internet

withdrawal of recognition to deal with delinquent schools without jeopardising the future of the students and teachers.

3.1.4 Loose Ends:

As pointed out by the Report of the High Powered Committee On Educational Legislation (Chandla Committee Report) 1997, several provisions especially those related to the take over of schools, conditions of suspension of recognition *inter alia* are inadequate.

- For instance, the Act fails to prescribe a solution in case a society that has established a school is either unwilling or incompetent to take the school back after 5 years of its take over.
- The Act does not provide for any special provisions for disabled students or for those with special needs.
- Neither does the Act provide for a ceiling on the number of students that can be enrolled in a school depending on its capacity. This can result in over burdening of the existing resources with the school and a consequent compromise in the quality of education provided by the school.

According to the Committee, "the provisions regarding inspection of schools, making up of the deficiency in the Pupils Fund, Corporal punishment, private tuitions, medium of instruction, three language formula, working hours and teaching hours, the Curriculum Committee and the Delhi Advisory Board of School Education, promotion rules, notice of intention to open a new school, condition of recognition, contingent grant, admission to unaided schools, donations allegedly taken by schools, etc have not been implemented."

3.1.5 Judicial Verdicts :

a. The Chandla Committee Report 1997 also pointed out that despite being struck down by the Supreme Court as being in conflict with the spirit of the Constitution, the provisions that empower the unaided minority schools to prescribe qualifications, code of conduct, scales of pay and allowances and retirement age and benefits, these provisions have not been removed or amended in the Act.

b. Similarly, the provision for Corporal Punishment in schools despite being struck down by the High Court continues to be part of the Rules. The Directorate has also issued a circular (R.no: D-558/DEO/ Admn/2002) dated 18.10.2002 acknowledged this ruling.

Corporal Punishment in Delhi schools

The dropout rate from schools has been on the rise because the children who received corporal punishment eventually lose interest in studies.¹³ The Delhi High Court in response to a petition filed by the Parents Forum For Meaningful Education, struck down the provision for corporal punishment¹⁴ provided under the Delhi School Education Act and Rules, 1973 on 1 December 2000, stating that the provision violated the constitutional right guaranteeing equality and protection of life and personal liberty.

The Rules provide for awarding corporal punishment to a student for certain acts defined under it, besides his expulsion and rustication if he is above 14 years of age. It, however, bars physically weak children from being punished physically. As many as up to ten cane strokes on the palms of a student are permissible under the Act. The punishment has to be noted in his or her conduct register.

The court rejected the Delhi Government's argument that the provision was crucial to ensure discipline among students. A division bench of Anil Dev Singh J. and MK Sharma J. also struck down other provisions in the Act that were deemed to be contrary to the National Policy on Education, 1992. The bench held:

"The national policy, in tune with the International Convention on Children, has adopted a child-centred approach, where corporal punishment has no place in the system of education. Even otherwise India, being a signatory to the Convention, is obliged to protect the child from physical or mental violence or injury while the child is in the care of any person, maybe educational institution, parents or legal guardian..." "Brutal treatment of children can never inculcate discipline in them. Obedience exacted by striking fear of punishment can make the child adopt the same tactics when he grows up for getting what he wants... the child has to be prepared for responsible life," the bench observed striking the rule down.¹⁵

3.1.5 The Delhi School Tribunal :

The Act provides that the Delhi School Tribunal be Constituted consisting of one person. There is the provision of additional staff as may be necessary in discharge of its function. It sits twice a week in the New Secretariat presided by the Secretary (Law, Judicial and Legislative Affairs)¹⁶ as an additional charge and the tribunal deals

¹³ Express News Service. 1998. Government to clarify stand on corporal punishment. Indian Express, Bombay, 4 December. Accessed on 9 July 2005. Available at: <http://www.corpun.com/ins00012.htm>. Internet

¹⁴ Rule 37(4), Delhi School Education Rules, 1973

¹⁵ HT Correspondent. 2000. Delhi school kids to be spared the rod. Hindustan Times, New Delhi, 2 December. Accessed on 9 July 2005. Available at: <http://www.corpun.com/ins00012.htm>. Internet

¹⁶ As on 12 July 2005

primarily with service matters of school employees which includes teachers: matters related to appointment, reduction in seniority and dismissal.

Even the officials accept that the existing provisions would have been sufficient in 1973 or even 10 years later but are now redundant. The Tribunal needs to be replaced by 2-3 special courts for speedier redressal of grievances with wider powers as recommended by the Chandla Committee Report 1997. The Committee also recommended that the jurisdiction of the Tribunal should be extended to cover criminal cases as well. Also, there should be a grievances redressal mechanism other than the Tribunal to attend expeditiously minor grievances of teachers and other employees.

3.1.6 Fee chargeable by private unaided schools:

a. Excessive fee charged by private unaided schools and irregularities in school accounts: There have been persistent demands by the parents for fixing an upper limit on the amount of fee charged by a school depending on its scale of operation, infrastructure and facilities provided to the students. A mechanism to check the 'donations' taken by the schools also needs to be devised. A large number of complaints that had surfaced were acknowledged by the Duggal Committee Report (1999). Majority of them pointed to the fact that the unaided private schools were indulging in financial malpractices and resorting to commercialisation on different pretexts and manipulating their accounts. In many schools, a drastic hike in fee had been effected even without implementing the recommendations of the Fifth Pay Commission. There were accusations of rampant contravention of the statutory provisions of the Act and Rules and that of profiteering.

The Delhi Abhibhavak Mahasangh representatives said that virtually all the unaided private schools in Delhi were indulging in malpractices by charging exorbitant amounts on the pretext of 'tuition fee and other charges' and diverting the funds to their managing societies. They claimed to have discovered innumerable instances of alleged exploitation by the schools in the garb of imparting 'quality' education. However, these complaints were not substantiated by necessary supporting documents.

The Delhi High Court observed in Delhi Abibhavak Mahasangh vs Union of India and others¹⁷, that there has to be an element of public benefit or philanthropy in the running of the schools. The schools are to be run for public good and not for private gain. The object has to be service to the Society and not to earn profit. Keeping these aims and objects in view the schools are required to also follow and comply the provisions of the Delhi School Education Act and the Rules framed thereunder as also the affiliation Bye laws framed by Central Board of Secondary Education. The schools are also required to comply with the conditions upon which the land may be

¹⁷ 1998(3) SLR (Delhi) (D.B.) 171

allotted to it by a public authority on concessional rates for setting up of a school building and its playground etc. But in a large number of cases, discrepancies have been observed in school accounts.

And WHEREAS the reports of the special inspections so arranged have revealed gross financial mismanagement and violation of various provisions of the Act, the Delhi School Education Rules, 1973 (hereinafter referred to as "the Rules") and directions issued from time to time, inasmuch as it is found that a large number of such schools have been realizing arbitrary and excessive admission fees, caution money, tuition fees, annual charges and funds under other heads, thereby violating the provisions of Section 18 of the Act read with Rule 176 of the Rules. By doing so, these schools have generated large amounts of surplus money. In some cases the surplus money is found to have been transferred to the parent societies and other schools in violation of Rule 177 of the Rules. It is also observed that fees and funds, thus, realised by the recognized unaided schools are not being utilized in the manner prescribed under Rule 177 of the Rules. On the contrary, they are spent in purchasing and maintaining assets, which are not useful or necessary for the students or the employees(Duggal committee report 1999).

The Supreme Court of India in the recent judgment of *Modern School vs Union of India*¹⁸ observed that, every school is required to file a statement of fees every year before the ensuing academic session under Section 17(3) of the Delhi School Education Act and Rules, 1973 with the Director. Such statement will indicate estimated income of the school derived from fees, estimated current operational expenses towards salaries and allowances payable to employees in terms of Rule 177(1). Such estimate will also indicate provision for donation, gratuity, reserve fund and other items under Rule 177(2) and savings thereafter, if any, in terms of the proviso to Rule 177(1).

Also, it shall be the duty of the Director of Education to ascertain whether terms of allotment of land by the Government to the schools have been complied with. The Director of Education was asked by the Court to look into letters of allotment issued by the Government and ascertain whether they have been complied-with by the schools within three months. If in a given case, the Director finds non-compliance of the above terms, the Director shall take appropriate steps in this regard. Every recognized unaided school covered by the Act should maintain the accounts on the principles of accounting applicable to non-business organization/not-for-profit organization; in this connection, the Court directed that every such school to prepare their financial statement consisting of Balance-sheet, Profit & Loss Account, and Receipt & Payment Account.

b. Transfer of funds to the Parent Society: Section 18 of the Act implies that schools must utilise the fees collected, only for activities specifically relating to the heads under which they are collected. Presumably this does not leave any room for a

¹⁸ 2004 SOL Case No 381

school to utilise any surplus from fees collected under a specific head for the expenditure under some other head. So in principle, there is no scope for schools to increase the tuition or other fees with the aim of generating a surplus to invest in starting new schools.

In *Modern School vs Union of India*, on 27 April 2004 a three-judge bench, comprising V N Khare C.J., S B Sinha J. and S H Kapadia J., in a 2:1 majority judgment, ruled that surplus money generated by one school cannot be transferred to the parent society that was administering the school.

This ruling has serious implications. If a Society running a school cannot invest the surplus generated in running that school into starting another school, it leaves them with no way to build up a chain of schools without resorting to external sources of finance. The logic applied by the bench seems to be that if a society running schools is not allowed to transfer funds from one school to another, it will be left with no reason to try to generate a surplus in any school. This would presumably drive down the fees in each school. Justice Sinha while dissenting with the majority said that the Courts should not put in clauses that were not there in the Education Act. He also added that schools could transfer funds from one school to another and use the same for establishment of new schools, as spread of education was the need of the hour.

This raised an important debatable issue as to whether the Supreme Court could make such policy decisions related to how societies running schools should manage their finances? The Supreme Court order against commercialisation of education by private schools in Delhi worried the managements and the directive that funds generated by one school cannot be transferred to the parent society running the school largely seen as a setback to the process of opening new schools. The management argued that a fallout of this directive could be that education would be pushed into the hands of business houses as only they would be able to set up new schools without the help of profits generated by their existing schools and consequently education would cease to be for the masses.

3.1.7 The system of inspections:

a. The absence of an adequate mechanism of inspection of schools remains a matter of concern. Rule 192 provides that except when a surprise visit is considered to be necessary, an advance intimation of the proposal to carry out inspection of a school shall be given to the head of the school. This may have been included to ensure availability of the Principal and school staff at the time of inspection but the advance notice gives the schools to clean up their act, prepare students and teachers to portray a false sound image that may be far from the real picture.

b. Section 24 of the Act provides that every recognised school shall be inspected at least once in each financial year. This is done by Education Officers of the

Directorate of Education but the Government schools are hardly visited by the Senior Officers of the education Department.¹⁹

According to the Vats Committee Report:

- Out of a total of 2223 schools in Delhi, 1011 are Government Schools, 217 are Government Aided Schools and 995 are Unaided Private Schools.
- Forty-two out of the 61 sanctioned posts of Education Officer are occupied so each Education Officer is responsible for inspection of approximately 53 schools.

Rule 193 states that every inspecting officer shall inspect not less than fifty schools in a year and not less than 10% of the schools shall be inspected every year by an officer above the rank of an inspecting officer. The Act makes it mandatory to provide 1000 instructional hours in a year along with 200 hours of remedial coaching. The schools therefore operate for approximately 210 days in an academic session,²⁰ this implies that *each inspector has to inspect a school every 4 days approximately*. The procedure is not just limited to inspection but also includes prior notification of inspection to the school, submitting a report and consequently following up with the school.

The Chandla committee Report, 1997 recommended that each inspection officer should inspect not less than 30 schools in a year. It also suggested that appropriate action be taken against education officers for not discharging their duties and a School Inspection Cell to be constituted that would follow up and monitor school and take disciplinary action.

c. There is an urgent need for greater accountability on part of inspectors themselves, as it was commonly accepted by official sources as well as private school teachers that there is rampant corruption.

d. While the Act provides for the penalty of stoppage of aid and withdrawal of recognition in case of a deficiency in Aided and Unaided schools but in case of Government schools there is no penalty for non-compliance and non-rectification that can be imposed. Moreover, there does not exist a proper and distinct monitoring mechanism to ensure that the problems identified during the inspection of the school have been rectified.

3.2 The Delhi School Education Rules, 1973: The Act has remained unamended but the Rules were last amended in 1990. In contrast with the Act, the Rules do contain certain specific provisions for Government schools as well.

¹⁹ Vats Committee Report . 2002. Report of committee on improvement in quality of education. Government of NCT Delhi

²⁰ Rule 32 (1), Delhi School Education Rules,1973

3.2.1 School Property:

Under the conditions for recognition, the Act lays down that no private school shall be recognized or continue to be recognized if the school buildings or other structures or the grounds are used during the day or night for commercial or residential purposes (except for residence of any school employee) for communal, political or non educational activity of any kind.²¹ However there is no provision check the commercial utilisation of school property of Government. or aided schools used for wedding receptions, musical functions or for accommodating MCD offices.

3.2.2 Double Shift System:

The double shift system was adopted due to the lack of requisite number of school buildings but this system leads to overstraining of academic resources and physical infrastructure and should be hence done away with. In the double shift system, the duration of each shift cannot exceed 5 an a half hours and therefore it is impossible for the school to have 1000 instructional hours in a year as prescribed by the Act along with 200 hours of remedial coaching.²² Moreover, a common complaint of the staff has been that there does not exist a sufficient gap between the two shifts for proper upkeep and cleaning up of the school before the next shift begins.

3.2.3 Role of PTAs in the schools:

One general complaint from the parents, as acknowledged by the Duggal Committee Report 1999 has been that the Parents Teachers' Associations (PTAs) which the schools officially own, are not truly representative of the parents genuinely aggrieved from the acts of omission and commission of the schools and that in practiced were composed of parents close to or influenced by the school management, therefore the real purpose of making a provision in the Delhi School Education Act regarding the PTAs for each school gets defeated.

3.2.4 Admission procedure to Government/Government Aided Schools:

a. There is no screening procedure in the Government/Government Aided Schools and they have to admit every child at the primary level. There is no formal examination procedure upto class three and promotion is on the basis on attendance. All students are admitted to class four in Government Schools according to an admission plan issued by the Department that varies from year to year.²³ As

²¹ Rule 50 (ix) Delhi School Educational Rules, 1973

²² Vats Committee Report . 2002. Report of committee on improvement in quality of education. Government of NCT Delhi

²³ Ibid

the intake of the student is not from the beginning, the Vats Committee points out, the academic standard is difficult to maintain. The admission procedures too are marred by incidences of nepotism and bribery, as admitted reluctantly by the official sources.

b. In the absence of a proper system of evaluation of the learning achievement of a child till class 3, there is no system to ensure teachers' accountability. A formal system of examination is not recommendable at such a junior stage nonetheless, there is a need to assess what has been learnt by the student in class by devising a system of evaluation based on teacher- student interaction in class.

c. The provision that a birth certificate is required at the time of admission served²⁴ as a deterrent for the destitute children from securing admission, but was struck down by the Delhi High Court.

"An affidavit has been filed by Shri S. C. Poddar, Director of Education, Govt. of NCTD in which it is pointed out that it is proposed to amend the Delhi School Education Rules, in cases where it is not possible to get an affidavit regarding age of a child, the head of the school shall refer the child to the nearest Civil Hospital having facilities for determination of age and in the admission form of the child the mid point of the suggested age on the basis of the test will be recorded. It is further submitted that the proposed amendment may take sometime to be made effective. In the meanwhile, directions have been issued that the heads of the institutions will grant provisional admission to such children pending amendment of the rules. We are of the view that in the given circumstance, the amendments to the rules as suggested by the respondents is the best solution of the problem highlighted by the petitioner in this writ petition. Since we find that the above solution suggested by the Director of Education to be the best in the given circumstances, we direct that National Open School to follow the same procedure," the Court observed.²⁵

The order released by the Directorate (Order No. DEO/1626 dated 04.09.2003) also re-acknowledges that admission should not be denied in case the parents are unable to furnish the required affidavits

3.2.5 Appointment and dismissal of teachers in private school:

A trend of schools flouting the norms prescribed by the Act apropos appointment and termination of services of teachers has been observed. It has been widely reported in several dailies. One such report reads as follows:

²⁴ Rule 135, Rule 141. Delhi School Education Rules, 1973

²⁵ Social Jurist vs. Union of India and others, C.W. No.3956 of 2000 (Delhi H.C.), Date of filing: 22.07.2000 Status: Decided on 29.08.2000

Schools flout employment rules ²⁶

TIMES NEWS NETWORK

[SATURDAY, JULY 17, 2004 11:50:17 PM]

NEW DELHI: That rules, as stipulated by the Delhi School Education Act, 1973 and the CBSE affiliation by-laws are "sacrosanct" is a fact only on paper. In reality, Delhi's public schools are openly flouting all norms.

There is no provision of contractual appointments in the DSE Act. However, in most schools, teachers and even principals are appointed on a contract basis. They are not given confirmation of being employees and are given "consolidated" salaries. Director of education, Rajendra Kumar admits the fact. He says: "There is no provision for contractual appointments except in case of minority schools."

The DSE Act also stipulates that no employee of a private public school may be dismissed, removed or reduced in rank without the prior approval of the education director.

The truth is that all these rules are being not followed. A case in point is the recent "termination of contract" of the Birla Vidya Niketan principal, Madhu Chandra. The fact that the principal had been appointed by the school's management committee on contract, is itself against the rules.

The Times of India also has in its possession a copy of the representation served to the directorate of education in this regard. When contacted about the termination, a managing committee member on condition of anonymity disclosed that the "termination of contract wasn't discussed with the committee members."

Meanwhile, director of education, Rajendra Kumar, when asked about whether his permission had been sought, said: "It's a quasi-judicial matter. I have passed relevant orders."

3.2.6 Problem of shortage of teachers in Government schools:

In response to a PIL²⁷ pointing out the large number of vacant teacher's posts in government schools, the High Court laid down the time schedule for the purposes of recruitment of teachers. This was done so that at the commencement of academic year 2003-2004 and also in subsequent years the number of vacant positions should be minimum. The Court in its order in regard to the appointments of teachers in Delhi Government Schools observed,

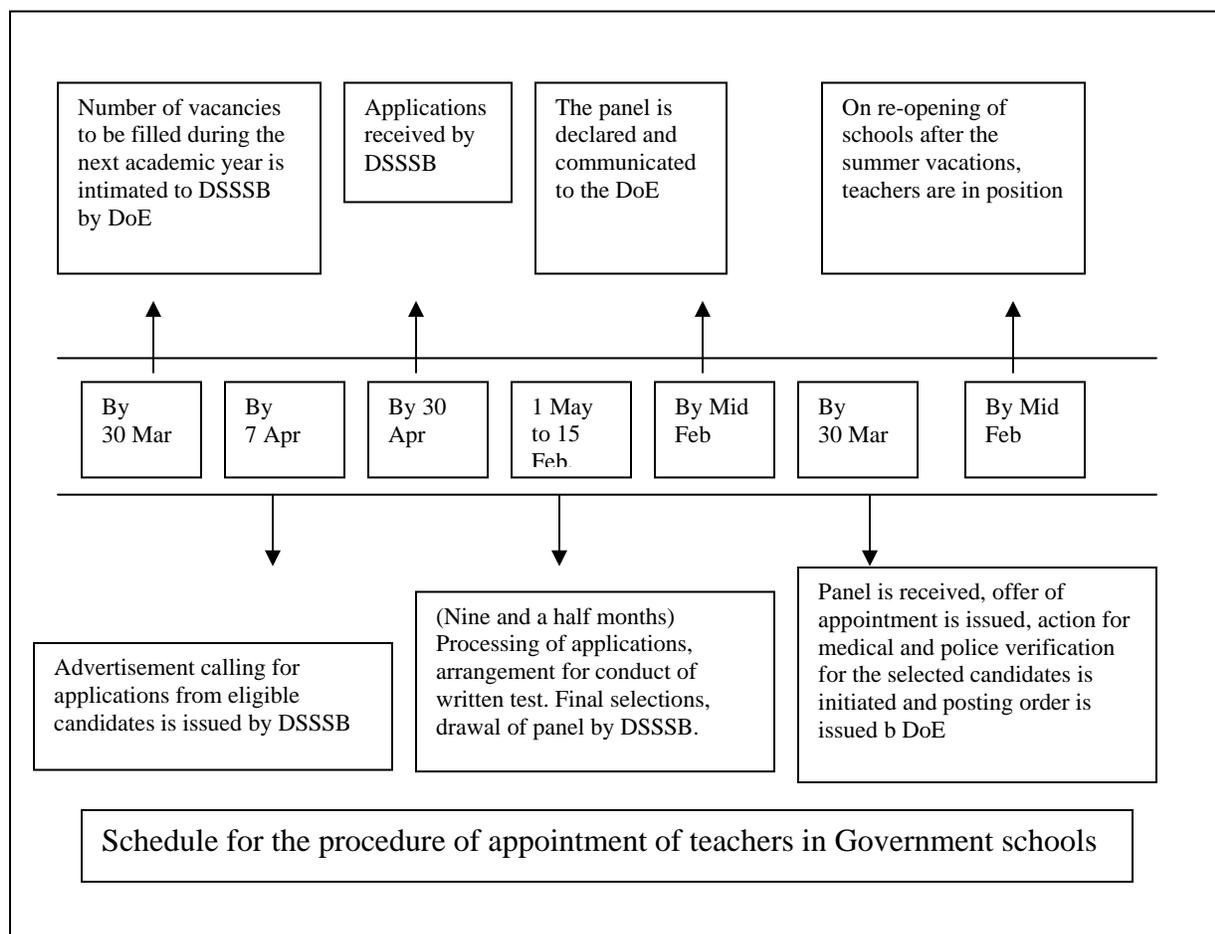
²⁶ Accessed at <http://timesofindia.indiatimes.com/articleshow/782121.cms> on 5 July 2005

²⁷ Social Jurist v. Government of NCT of Delhi, CWP 1611 DEL(2001)

"For filling up of the vacancies for the year 2003 onwards, in the affidavit, a time schedule has been given so that the PGTs and TGTs²⁸ are in their respective position by the First of April every year from the year 2003 onwards."
The schedule, which has been laid, is as follows:²⁹ -

²⁸ PGTs and TGTs stand for Post Graduate Teachers and Trained Graduate Teachers respectively.

²⁹ DSSSB and DoE In the diagram stand for Delhi Subordinate Services Selection Board and Directorate of Education respectively.



A similar schedule was prescribed by the Court to ensure that the Assistant teachers are in their respective positions by the beginning of a new academic session.³⁰ Despite active interest shown by the High Court in trying to devise a system to ensure minimum teachers vacancy but there are 8,913 vacancies in government schools, about 4,000 posts are lying vacant in MCD schools currently³¹.

3.2.7 Teacher' s Accountability

Rule123 (viii) states "No teacher shall accept any job of a remunerative character from any source other than the school or give private tuition to any student or other person or engage himself in any business;" but this provision is openly flouted.

"Tuitions create a big menace for effective transaction in classrooms...teachers are busy with private tuitions and it has grown into a highly lucrative side business.

³⁰ Refer to Annexure 1

³¹ Sinha, Bhadra. 2005. 13000 vacancies in government, MCD schools. Times of India, 4 June.

During interaction with representatives of some private (public) schools, they openly admitted that their good results were due to the Government school teachers who impart private tuitions to the public school students. Even some CBSE officials confirmed this fact." (The Vats Committee Report, 2000)

Moreover, the prevalent practice of sending the heads of schools on non-academic assignments like elections, census work, etc impedes the regular functioning of schools and the teaching activity.

CHAPTER 4

Analysis of the institutional framework of education:

This part of the paper studies the state of government run/ aided school in Delhi and the role of the Directorate of Education and its efficiency. It includes the highlights of a newspaper written by Dr AK Shiva Kumar on the educational scenario in India, to compare the state of affairs in Delhi *vis- a- vis* the rest of the country

In Large states public education will always be mediocre, for the same reason that in large kitchens the cooking is usually bad.

– Friedrich Nietzsche

The Vats committee (2002) reluctantly concedes: " However an impression has been gaining ground that inspite of having sufficient funds and qualified staff, the Government schools have not been able to impart good quality of education". The Committee report also points to the fact "The major problem affecting government schools' performance are very common and general but left unattended for a long time." The report also noted that majority of Government schools lack a conducive academic environment: "...no progress has been made and Government School buildings lie in a state of sheer neglect."

Government schools are largely characterised by infrastructural inadequacies. There are no blackboards, restrooms and sometimes not even adequate classrooms. Classes are held in the open, even during the summer. Class sizes are big, thus teachers are not able to give individual attention to the children. Textbooks and uniforms frequently do not reach to their beneficiaries on time³². Moreover, there are a large number of teachers vacancies, frequent teacher absenteeism and irresponsibility on part of the teachers due lack of incentives, frequent transfers and promotion on the basis of seniority rather than performance. Medium of education also plays a vital role, the students attending government schools receive vernacular language education disqualifying them ab initio for aspiring to the best jobs and the good life in a rapidly crystallising English-dominated order.³³ Consequently, parents opt for private unaided schools because they offer instruction in English

The Duggal committee report 1999 also states: "The Director candidly conceded that if the Government owned schools were run efficiently, there would have been no need for unaided private schools and in any case they would not have proliferated in such great numbers and be in a position to indulge in large scale unchecked commercialisation. He

³² Gohain, Manash Pratim. 2005. Popularising MCD Schools. Education Times, Times of India. 6 June.

³³ Yasmeen, Summiya.2004. Swelling support for common schools. Accessed on 30 May 2005. Available at <http://www.indiatogether.org/2004/jul/edu-kothari.htm> . Internet

pointed out that lack of resources and infrastructure were the basic causes of the prevailing malady”

Quality Education can only be ensured by a dedicated, well-educated and trained teaching faculty that forms the foundation of any educational institution. “Teachers understand their rights and not their duties. There is a frequent loss of man-days available for their results. No serious attention has been paid to professional accountability system in Government schools which is the need of the hour.”(Vats Committee Report 2002)

Accountability is also the factor highlighted by Drèze and Saran, who note of one government primary school that, 'since the salary of the teacher was not related to his work performance, and since his appointment was technically a 'permanent' one, he had little incentive to take his job seriously. In fact he rarely took the trouble of turning up at all'. they note that such problems are not found in the private sector. The PROBE report attributes the success of Private schools to a single factor: greater accountability existing in their administration.³⁴

While commenting on the role played by the Directorate of Education in Delhi, the Duggal Committee Report (1999) states:

“The Committee takes a very serious view of the passive role of the Directorate in respect of lapses on the part of the erring schools and recommends that the Department of Education, should forthwith initiate such action as is necessary for rectification of the wrongs on the part of schools such as insistence for the refund/adjustment of the amounts collected in excess by the schools; as also for preventing the recurrence of such lapses in future.”

DoE gives excess grant to school³⁵

Tribune News Service

New Delhi, April 8 In 1997-98, when Gadodia Girls Secondary School, Chandni Chowk, had 28 pupils on roll, the amount of grant released by the Directorate of Education was Rs 11,329,50 and in 2003 when the number of pupils slipped down to a mere 10, the grant rose to Rs 15,91,945.

Even as the matter is now under 'examination', the lapse has caused the DoE over Rs 1 crore between 1997 and 2003 by way of excess release of grant-in-aid.

According to the Delhi School Education Rules 1973, the number of students on the rolls of an aided school shall not fall below the number on the basis of which the aid was initially granted.

³⁴ Drèze, J. and M. Saran (1993) Primary Education and Economic Development in China and India: Overview and Two Case Studies, Discussion Paper No. 47, Development Economic Research Programme, London: STICERD, LSE

³⁵ Accessed at <http://www.tribuneindia.com/2005/20050409/delhi.htm> on 28 June 2005

It further says that where the number of students falls below 75 per cent of the first mentioned number, a proportionate reduction may be made in the grant-in-aid payable to the school.

However, the DoE in violation of the rules continued to release the grant-in-aid to the school without any proportionate reduction as required. The school, which was started in May 1966 with 342 students, today has students in double digits.

On the glitch being pointed out, the Deputy Director of the North District said that there was no provision for complete closure of the school with the decreasing strength of students and the grant was being released for eight staff members against the minimum essential requirement of 17 staffers.

But the CAG has rendered his reply as 'not tenable'. In its report, the CAG has pointed out that the DSE rules contemplate a situation where an aided school may be closed and provided for absorption of the students or employees thus rendered surplus into another aided school or government-run school.

It further says, "Given the minuscule number of students and staff, as on November 2004, it is evident that the grant could have been more fruitfully utilised elsewhere in support of educational activities and the students and staff absorbed into some other better equipped school with adequate strength."

Dr. A.K. Shiva Kumar in an article in Times of India (11 November 2003) advocates zero tolerance for inferior education:

It is time for the Prime Minister to declare an educational emergency. This is the only way to end the growing divide in education being perpetuated by the extraordinary expansion in educational opportunities for the privileged and the gross neglect of basic education for the poor and socially disadvantaged... The widening gap between the learning opportunities available to the haves and have-nots is creating a kind of apartheid in education. The most deprived are rural, poor and socially disadvantaged communities, which are increasingly marginalized and excluded from enjoying the exceptional economic resurgence taking place today. The way forward is not to restrict the expansion in choices, but to make them uniformly available to all children... official statistics, for instance report that there are over 157 million children studying in primary and upper- primary schools. By its own admission, the government reported that in 2000, there were 59 million children between 6-14 years who were out of school, 35 million of them girls. All of sub-Saharan Africa reports only 44 million children out of school. The issue here is not whether sub-Saharan Africa is under reporting its figures, or whether reported. It is shameful for any child, no matter where, to be deprived of access to good quality education and denied the opportunity to learn and enjoy schooling... the government reports that 95 per cent of India's rural population residing in 8,26,000 rural habitations have a primary school within a walking distance of one

kilometre. But what kinds of schools are these? Many centres under government patronage can hardly qualify as schools. These are often justified on grounds that some education is better than no education at all.

CHAPTER V

Conclusion

A detailed scrutiny of the Delhi school Education Act and Rules, 1973 reveals that the Act seeks to achieve better organization and development of school education in Delhi, but the regulatory framework adopted in the Act works against the principles of natural incentives. By restricting transfer of funds to the society establishing the school, confining the use of school property, limiting the autonomy of private schools in employment, payment of salaries and dismissal of teachers there is little incentive on part of any private player to open a school *in compliance with the given regulatory framework*. 'In compliance with the regulatory frame work' is highlighted as the outcome of the strict regulations is unfettered mushrooming of unrecognized schools in the city.

Registration of schools can be seen as a feasible option not only from the regulative point of view but also to provide as an indicator on the basis of which one can determine the number of school going children and all the existing educational opportunities in Delhi. Registration, here, should not be mistaken as a concept against liberalization. It should be seen as distinct from licensing and certification. Licensing would entail obtaining a permit to operate, certification involves a system of assigning grades or accreditation based on performance while registration is simply a notification of one's presence. Infact an effective system of setting up of schools, based on choice and competition would involve both registration and certification.

It is essential to identify here that a system based on incentives rather than penalties will form an environment conducive to innovation and increased participation. The approach adopted in the Act is flawed. The framework provided in the Act that defines entry, recognition and functional barriers is widely perceived as rigid and unprogressive³⁶. It serves as a deterrent for individual or private participation in this sector while complying with the given regulatory framework. Schools today must be run as non-profit activity only and so there is no incentive for private commercial investment in the school sector. In the attempt to further restrict commercialisation, the framework provided ends up effectively denying the opportunity of providing education in a country like our own. The role of the regulations so far has been to overwhelm the entrepreneurial spirit in education with stifling regulations and red tape.

It would be next to impossible to achieve our aim for 'education for all' given the constraints faced by the state in providing education opportunities for each and every individual without involving the private sector. Through the Act we are effectively discouraging private entrepreneurship in providing education opportunities. The Act should be made more incentive compatible leaving minimum scope for cheating. Providing incentives to the private players to open schools entails reforming the entire system. Increased private participation would increase competition in the educational sector. 'Competition creates a rising tide that lifts all boats' (Hoxby, 2001). Competition

³⁶ For further reading : Law, Liberty and Livelihood by Parth J. Shah and Naveen Mandava

encourages people to perform their best and creates opportunities for greater specialisation. 'If schooling ...were delivered by a competitive education market place, schools would specialize in serving children with certain needs, rather than provide one-size-fits-all curricula that satisfy no one.' (Walberg, 2003). Independent accreditation agencies would provide vital information for a parent to make an informed decision as well as compel schools to improve their performance and push the government schools towards abandoning the shackles of complacency. Therefore, by encouraging private initiative there would be overall quality of education that would automatically prove to be a sufficient incentive for students and teachers to study and teach respectively.

In India, education for the masses has always connoted state provision of education. There is a widespread assumption in the minds of we Indians connected with the private sector in education is that it caters only to the privileged, and that its promotion would only serve to aggravate inequality in our society.

James Tooley vehemently suggests that in developing countries, it is not the state that has the greatest potential to help the poor, but the private sector. The State's major role should be to help ensure that the regulatory and investment climate is conducive to the development and nurturing of these (private) schools. "If we are concerned with reaching the 'Education for all' targets of having all children in quality primary education by 2015, surely we should be looking to the private sector to play a significant role here? Surely we should be trumpeting its successes and seeking ways of helping its improvement as a major response to the needs of education for all.

Going back to the lack of incentives in the system of education as a consequence of the framework provided in the Act, the teachers in government schools too are affected. There is lack of motivation, the Act clearly does not identify inherent problems like, promotions are not based on performance but on seniority, teachers are sent on non academic assignments, frequent transfers are a source of nuisance, so on and so forth. Given the academic environment in government school resulting from lack of teacher's accountability, the student too is bereft of any incentive to study in school.

In contrast, 'private schools have the advantage of being "incentive compatible", in the sense that it is in the interest of the parents to keep an eye on the teacher, and in the interest of teachers to be responsive to parental demands (unlike in the government primary school, where the teacher is paid irrespective of his performance).'

³⁷

The Act actually serves as a classic example improving an assertion by Herbert J. Walberg and Joseph L. Bast, in their book, *Education and Capitalism: How Overcoming our fear of Markets and Economics can improve America's Schools*. The authors argue that regulators tend to represent the interests of those they are supposed to regulate rather than those they are supposed to protect. In the present context, by taking an example, the Act seeks to protect the interests of say, teachers employed in a private recognised school and hence their salaries and benefits (along those of with other school employees) shall not be less than those of the employees of corresponding status

³⁷ Drèze, J. and M. Saran (1993) Primary Education and Economic Development in China and India: Overview and Two Case Studies, Discussion Paper No. 47, Development Economic Research Programme, London: STICERD, LSE

in government schools.³⁸ The Act also provides that no employee of a recognised private school shall be dismissed, reduced in rank or removed without the prior approval of the Director.³⁹ These provisions instead have a counter effect on safeguarding the interests of the teachers. The outcome is that teachers are now appointed on a contract basis by private schools and are not given confirmation of their employment⁴⁰ or the new private players are discouraged from opening up of new schools and generating additional employment opportunities for the teachers.

An examination of the existing scenario of education suggests that if one is interested in providing for quality education, then to altering the completely inadequate, unwieldy and unaccountable government schooling system is certainly not feasible. There is an urgent need to reform the regulatory provisions to make it suitable to promote private schools and encourage public voucher schemes, so that parents can gainfully utilise their allowance of funding wherever they see adequate opportunities of learning for their child, rather than sending them to incompetent and unproductive state schools.

Greater autonomy and decentralisation is the need of the hour. "It is being increasingly realised that centrally administered management cannot differentiate one school from another, it is unable to cater to the needs of individual school because every institution has a personality of its own. Each school presents a distinctly different picture than the other even if they exist in the same vicinity catering to the clientele belonging to the same socio economic group." (Vats committee report, 2002). The Committee concluded: "... the Directorate of Education is ill equipped to handle the management of Government Schools." Decentralisation and autonomy not only imply greater delegation of responsibility but also greater delegation of powers. The Act should be amended so that greater autonomy is granted to schools based on their past records. Autonomy to schools would decrease central control the locus of authority will shift closer to the teachers, administrators and parents that will be utilised to ensure greater accountability.

Presently, the Code of conduct prescribed in the Act does not apply to Govt. school teachers, who are covered under CCS (Conduct) Rules 1964 and CCS (CCA) Rules 1965. Service matters of teachers remain the most disputed part of the Act. Appointment, dismissal and pay scales of the teachers of private schools is also governed by the Act. Management of Private Schools should be given greater autonomy and should be inter alia empowered to appoint its staff and take disciplinary action. Along with the PTAs it can also assume the function of monitoring the performance of the teachers and the expenditure incurred by the school. The Delhi School Education Advisory Board should be provided a more active role to play in the educational set up.

The Delhi School Education Act, 1973 should ideally seek to reflect the changes in society and the prevalent trend towards liberalisation and globalisation. Recent developments in technology as well as enactment of the Right to Information Act, 2005 a trend towards a culture of openness and transparency has been set in motion. One of

³⁸ Section 10, Delhi School Education Act, 1973

³⁹ Section 8(2), Delhi School Education Act, 1973

⁴⁰ Refer to Newspaper report on page 23

the motivations behind the amendments should be to reflect that trend. The Act should promote innovation and modernisation of education and decentralisation of power. Various provisions of the Act and the Rules concerning entry, recognition and operation should be made flexible with minimum inane and extraneous interference in functioning of relatively successful private schools. The provisions and the Rules need to be in tune with the times so as to serve as an incentive to encourage private entrepreneurship by individuals and private organisations.

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Annexure 1

In regard to the appointment of teachers in MCD Schools, the Court observed, "After some discussion in Court, it has been agreed that in order to ensure that the Assistant Teachers are in their respective positions by the first of July every year with effect from 2003, the following time schedule will, be adhered to.

The said is given as under:

1. By 30th March:

Number of vacancies to be filled during the next academic year (i.e. beginning July next year) is intimated to DSSSB by Directorate of Education.

2. By 7th April:

Advertisement calling for applications from eligible candidates is issued by DSSSB.

3. By 30th April:

Applications are received by DSSSB.

4. 1st May to 30th April (One year)

Processing of applications, arrangement for conduct of written test, selection, drawal of panel by DSSSB.

5. By 1st May:

The Panel is declared and communicated to the Directorate of Education by DSSSB.

6 By 1st June:

Panel is received, offer of appointment is issued, action for medical and police verification for the selected candidates is initiated and posting order is issued by the Directorate of Education.

7. By July:

On re-opening of the schools after summer vacations, teachers are in position