

## **India's New Mandate against Economic Apartheid in Schools**

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### **Abstract**

In most countries, children attend the common neighbourhood school, especially at the compulsory stage. In India however, in keeping with its highly stratified and hierarchically oriented society, schools and parents in India tend to choose each other based largely on socio-economic criteria. India's new law on right to education attempts to put an end to this socio economic segregation by mandating the admission and free education of children from economically weaker sections in all private schools. This paper attempts to show that social mixing is still contested in India despite an egalitarian Constitution and a history of past policy attempts at social reconstruction. India's new law too on right to education was also challenged unsuccessfully by private schools, but this paper points out that promising developments and sentiments indicate new optimism for the end of economic apartheid in schooling in India.

### **Introduction**

In 2009 India enacted its first central legislation to make education a fundamental right. India's "Right of Children to Free and Compulsory Education Act 2009" an Act which has been hailed as 'historic' brought with it a number of measures for much needed improvement. However, 'The RTE Act' (as the 'Right of Children to Free and Compulsory Education Act' is referred to in short form) is known less for its reform measures, than for one of its clauses, which perceived as radical, has become renowned and almost symbolic of the RTE Act itself. This is the clause which, by making it mandatory for private fee-charging (often elite) schools to admit the children of the poor and teach them in inclusive classrooms alongside their fee paying pupils from privileged backgrounds, strikes at India's class-conscious society, reflected in its economically segregated schools.

Large differences exist among schools in India, and, as Juneja (2010) points out, disparities in quality and infrastructure may be found among both government and private schools. Private schools however enjoy brand advantage of alleged superior quality with admission in such schools being seen as a marker of status. Initially restricted to a few elite schools attended by the rich, the increasing numbers of low fee private schools testifies to popular demand across the socioeconomic spectrum. Within each school however, the clientele is usually restricted to a narrow socioeconomic band, partly due to differential fees, but also because prior to the 'RTE Act' private schools could screen and select pupils, resulting in a situation, not unlike apartheid, with school clientele based on

socioeconomic criteria.

In India, unlike the situation in most countries of the world, private school enrolment represents over a third of the country's school going population. India's is arguably the largest system of private schools in the world with almost forty per cent of all enrolments being in private recognized and unrecognized schools. (NUEPA, 2013). The RTE clause mandating inclusion of the poor in all private schools, thus applies to more than 307,978 schools, and seeks to change the 'exclusive' character of their social composition. The implementation of this clause could possibly enable the inclusion of almost a million children from disadvantaged and weaker sections into fee charging schools that would not normally have given them access.

### **The "RTE Act 2009" and its Contentious Clause**

School education in India has traditionally been a 'state' subject. It was so under British rule with each province making its own laws on education, and it continued to be so regarded even after India's independence for the Centre did not make any law for school education. 'The Right of Children to Free and Compulsory Education Act 2009', is often referred to as a 'historic' legislation, for it was with this legislation that the Central Government exercised its right for the first time to make legislation for this stage of education and to introduce a number of much needed reforms in school education.

The RTE Act spelled out the specific and combined duties of the Central Government and the state governments and local bodies towards providing schools and in ensuring child attendance and learning. A number of bureaucratic hurdles that had the effect of turning away admission seekers (many of whom were first generation learners) were also addressed. Admission had to be granted throughout the academic year, and schools could no longer demand birth certificates and transfer certificates as pre conditions for admission.

To put an end to the growing tendency of governments to provide education through para formal modes using untrained and ill paid teachers, this Act declared that all children had a right to formal full time education for eight years in a school (recognized as conforming to specified minimum norms and standards) and to be taught by teachers whose qualifications were approved by a body determined by the Central Government, and whose remuneration and terms of service were declared upfront by the state governments. In making such prescriptions, this Act defined by law, for the first time, a 'school' in India, and the duties of teachers in these schools.

Matters of curriculum, evaluation and the conditions under which the teaching learning process was to take place were also specified by this law. Corporal punishment, mental harassment, failure and repetition of the same class and expulsion were banned, as was the practice of private tutoring by school teachers. In each school, the Act made parents, mainly mothers, the majority members in mandatory 'School Management Committees'.

To oversee implementation and to monitor its compliance, the RTE Act instituted a national body and state level bodies, along with national and state level advisory bodies.

Since a large number of schools in India are private managed, this Act also included a number of provisions in order to curb some of the undesirable practices of private schools. For example, the schools which were greatly in demand, would subject toddlers and their parents to various screening tests and interviews in order to cherry pick the clientele they wanted for their school. Admissions were often conditional on the payment of large sums of money, known as 'capitation fees' to the schools. 'The Right of Children to Free and Compulsory Education Act 2009' banned screening and the taking of capitation fees.

Ironically, it is not for these far reaching reform measures that the RTE Act is best known. Media headlines such as 'Schools oppose RTE Act', or 'RTE students face discrimination' are referring to none of the above mentioned reform measures of the RTE Act – but to one specific clause, which appears to have mesmerized media and public attention – Section 12 (1) c of the RTE Act that requires every private fee charging school to admit and provide free education to at least 25 per cent of their new enrolments, from among children of economically weaker sections and disadvantaged groups.

### ***The Contentious Clause***

Within the RTE Act, the clause which is perceived as symbolic of the RTE Act by media and as contentious by private schools is placed as section 12(1) c and this clause states:

*12. (1) For the purposes of this Act, a school,—  
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.*

It may be noted that to the above RTE clause in the 'RTE Act', the proviso to the main clause limits the entry of children from economically weaker sections only to the entry class of the school, (whether it be grade one, or the preschool), in order to minimize initial differences among the children.

The Act also provides that for the free education provided to the poor, the private schools would be reimbursed costs at the rate at which it costs the government to educate children in its own schools. Subsequent provisions in this clause elaborate on the manner in which these private schools will be reimbursed. Exceptions to this provision for

reimbursement would be those schools which were already under such an obligation as a condition of allotment of free land – a reference to the genesis of this clause in land legislation. A later section of this paper elaborates on the Indian policy of land grant to reinforce social mixing. The next section attempts to explain why social mixing, and the right of all children to equal opportunity, a norm unquestioned in most countries, is still a contentious issue in India today.

### **Social Mixing -a Contentious Issue in India**

Those unfamiliar with the Indian social context and the education scene in India may require an explanation for the excitement generated in India by Section 12 (i) c of the RTE Act and why it is almost always in the news, or why it is opposed by schools to the extent of being challenged in the Supreme Court.

Indeed those from developed countries such as Canada, USA, The United Kingdom, Japan, Korea etc. largely take for granted the equality of educational opportunity, and of schooling being organized along geographical lines with all children in the village, or neighbourhood attending the same school. Educational administration on the basis of a school map evolved with the weakening of social class divisions in the west. According to Mclean (1995) around the mid-19<sup>th</sup> century when “Central Europe became the vanguard of social and economic change” (p.77), social class divisions had weakened and state collectivism had progressed due to religious drives as well as lack of religious, ethnic and linguistic divides. This was facilitated by an egalitarian and rationalist view of knowledge, which provided for collective improvement of the whole population, as opposed to assumptions of greater innate worth of some people.

So pervasive was this movement that even otherwise polarized countries shared common ground regarding the schooling of children. Thus the Soviet common school “was based on the belief that all citizens had an obligation to reach certain standards of attainment and that there were no inherent differences between students which would prevent these minimum standards being met.” (McLean, 1995, p.58). In the American case, “the American common school was as egalitarian in its aims and structure as that of the Soviet Union in the mid twentieth century” (p.65)

In the case of eastern communities, the practice of equality of educational opportunity is credited to the teachings of Confucius, who believed that any person from any social background, through determination, has the capacity to succeed. This philosophy supported by the egalitarian traditions of Buddhism, contributed to the equality evidenced in schools of this region such as in the Japanese education system. According to Okomoto (2006) “the characteristic way of thinking among most Japanese people is a strong demand for ‘equality’ in education, which could be called a “rage for equality”, especially in the case of compulsory school education. (p.12)

### ***Education in India: A Privilege of Some***

India, in contrast to developed countries with egalitarian traditions of education is characterized by deeply rooted customs of social stratification. Despite efforts by the Government to ban the practice of caste discrimination, it is evidenced even today in daily social interactions especially those related to eating and drinking. Education, or who should, or should not, have access to it, plays an important part in these caste stratifications. Traditionally, education in India was jealously guarded as the privilege of certain higher castes, and even today, the imprint of these exclusionary ideas are reflected in the use of education to reproduce the existing status quo, to appropriate education for certain groups, and in notions of who can and should learn.

Therefore within such exclusionary frames of reference related to education, there is little space for ideas such as of a common education for all. Admittedly a change of discourse has taken place since the 1990s in the wake of the Convention on the Rights of the Child; the World Education Forum at Jomtien, and the advocacy by academic and civil society actors. Although the recent discourse has brought with it the acceptance of the rights of *all* children to education, it is not yet egalitarian enough to accept the notion of an *equal* education for all, and has a long way to go before it can embrace the concept of a *common* education for all.

Therefore in India schooling is actively sought by different socioeconomic groups in private schools offering the degree of elitism commensurate with class status (actual or aspired). Concomitant with the spread of education to all social and economic groups, one may see today, a large and diverse range of schooling options mirroring the social stratifications in society (Juneja, 2010).

### ***Segregated Schools***

Juneja (2010) describes the diversity, disparity and increasing differentiation in formal, and non-formal schools, both government and private, which characterize the contemporary Indian scene. Children from different socioeconomic backgrounds have access to different types of schools, creating what Ramchandran (2004) describes as 'hierarchies of accesses'. She states that "the imperative to gain access to better schools puts immense pressure on parents and little children alike. For example, admissions to better schools may involve children signing up for pre-school in order to prepare them for the admissions interview. Schooling choice in these contexts is the power enjoyed by schools to choose who they want to admit". (p.25). As pointed out by Juneja (2005), a privileged social status was enjoyed both by schools and their clientele through their power of being "exclusive" to the chosen few from a socio economic niche. On the other hand, free education in the schools provided by the government is increasingly being perceived as a default option for those unable to afford private schooling.

The groundbreaking 'Coleman Report' of the 1960s in the USA, described children

as attending segregated schools when “almost all of their fellow students are of the same racial background as they are” (Coleman, 1966, p.3) In India, in the place of racial background, it is the socio economic background that is homogenous within Indian schools, government or private, and in that sense therefore, not unlike apartheid, they ostensibly provide segregated schooling experiences for children. Children from the same neighbourhood may thus inhabit separate educational worlds determined by the socio economic status of their parents, which they become inevitably predisposed to reproduce.

These increasingly unequal schools estranged on class lines, in this fashion add more cracks to a society already stratified along caste lines. As with racial segregation, these tears in the social fabric threaten mutual regard and social cohesion, which condition, clause 12 (1) c of ‘The Right of Children to Free and Compulsory Education Act 2009’ attempted to repair by mandating socio economically mixed classrooms in fee charging private schools.

### ***Antagonism and Legal Challenge by Private Schools***

Reminiscent of the aftermath of the landmark judgment in the U.S. Supreme Court Case of ‘Brown vs. the Board of Education’ (Brown v. Board of Education of Topeka, 1954) which marked the beginning of the end of racial segregation in U.S. schools, the RTE Act too, by mandating that socio economically segregated schools in India become more inclusive, created waves in still waters. Private schools were openly hostile to the idea of admitting children from other social and economic groups (“Private Schools Baulk at RTE Act”, 2012; “Unaided Minority Schools Junk State RTE Directive”, 2013) and media reports claiming unfair treatment (“Unfair to put burden of RTE on Private Schools” 2013) carried their message in the hope of garnering support for their ‘cause’ of freeing themselves of this clause “Schools Seek Exemption from RTE Clause”. 2012). For this purpose, a number of private schools across India, catering to an ‘elite’ clientele, came together to defend their ‘turf’ from inclusion of poor children, and to contest the RTE Act in the Supreme Court of India in *Society for Unaided Private Schools of Rajasthan v Union of India*<sup>1</sup>.

The filing of the case was in itself of immediate strategic benefit to the private schools, for, during the pendency of the court case, (about two years), the inclusion clause could not be implemented. It was only in April 2012, that the Supreme Court of India returned a verdict in favor of the RTE Act 2009, and declared (for all schools other than minority schools, and residential schools) that “*Section 12(1)(c)* [of the “Right of Children to Free and Compulsory Education Act” 2009] *provides for level playing field in the matter of right to education to children who are prevented from accessing education because they do not have the means or their parents do not have the means to pay for their fees*”. (Society for unaided private schools of Rajasthan 2010, p. 24)

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<sup>1</sup> (2012) 6 SCC 1

Again, by the time of the above judgment in April, school admissions had already place for the academic year 2012-13. Therefore, it was only in the academic year 2013-14 that private schools nationwide became liable to admit children of the poor under this clause of the RTE Act 2009.

Despite the Supreme Court Judgment however, private schools continue to drag their feet in the matter of admissions from among the poor. A recent study (The RTE Forum, 2013) of 256 private unaided schools, found that less than 35 per cent of the schools were implementing this mandate.

### **Failure of Egalitarian Policy**

Social reconstruction and the need for the State, especially in its system of education, to reinforce social mixing have long been an ideology and an expressed policy in India. After its independence, the preamble of the newly adopted Constitution of India in 1950, gave expression to a state ideology of seeking social, economic and political justice for the people. Although Article 30 of the Constitution allowed the continuance of private educational institutions alongside government schools, Article 38 asked the State to strive to eliminate inequalities in status, facilities and opportunities, while Article 39 asked the state to direct its policy towards ensuring that “the ownership and control of material resources of the community are so distributed as to subserve the common good”.

Thereafter in the early years of independent India, the doctrine of the Constitution, and Prime Minister Nehru’s vision of the state as an agency to overcome social inequality came to be incorporated into the policies (and legislation) of that period (Gottlob, 2007, p.783) as may be seen in the case of central policies related to urban land and education. ‘Social objectives’ were integrated and enunciated into land policy and urban land legislation. These ensured the continuance of policies regarding allotment of land for supporting public purposes but with terms and conditions of provision of free social service (Juneja, 2005). This ethos no doubt inclined the Education Commission (1964-66) (India G. o., 1966) to back common schooling with the same belief that led the Delhi Master plan (MPD-62) (Govt of India, 1962) to insist that zoning should not “on any account be used to accomplish any kind of human segregation like excluding certain communities or income groups from certain areas” (Sharan, 2006, p.4908). The report of the Education Commission (India, 1966) considered it to be the “*responsibility of the educational system to bring the different social classes and groups together and thus promote the emergence of an egalitarian and integrated society.*” (Para 1.36)

### **Land Grant Policy**

The ‘land grant’ is one of the oldest and established traditions practiced by royalty, and later by governments all over the world, to show pleasure or to support institutions perceived as charitable or serving a desirable public purpose. Land grants in the USA

were employed for the promotion of the causes of the weaker sections as early as 1890, when the second Morrill Act granted land only to those states which could show “that race or color was not an admissions criterion”. (Association of Public and Land grant Universities, 2012, p.4)

Although employed at that time to encourage racial mixing, this educational tradition originating in Europe, was practiced in the USA even in the late eighteenth century to give land to schools and universities “for further use in supporting their educational endeavours” (United States Congress, 1994, p. 5952).

Such a tradition, not restricted to educational purposes, was followed even in India both before and after independence and land was given at the pleasure of the rulers as grant or ‘Nazul’ (Sharan, 2006; Premchand, 2007). In the case of Delhi, for example it is on record (Sharma et al., 2011) that Modern School applied for land in 1926, and obtained it at Barakhamba Road in 1929, and that in 1936, six schools applied to the Chief Commissioner Delhi, for ‘concessional land’.

***Land grant for private schools***

In Indian Cities, the establishment of private schools was supported by the allotment of free land. The contract of terms and conditions of land allotment required private schools to admit and provide free education to 25 per cent of their enrolment, from the weaker sections of society. Policies on Land and Education echoed each other in their attempt to erase the traditional divisions along caste and class lines (Box 1).

**Box 1: Ethos of the Period: Shared Sentiments and Terms in the Urban Land Policy Document (1965) and the Report of the Education Commission (1966)**

<b><u>Report of the Education Commission 1964-66)</u></b>	<b><u>Urban Land Policy (1965)</u></b>
Function of Education perceived as: “ <i>a powerful <u>instrument</u> of social economic and cultural transformation necessary for the realization or <u>national goals</u>”</i> ”	Function of Urban Land Policy perceived as: “ <i>a well contrived <u>instrument</u> whose aim is to serve broader social objectives and the unhampered fruition of <u>National Plans</u>”</i> ” - (TCPO Policy Note pg.3).
“ <i>...the <u>acceptance</u> of a <u>socialistic pattern of society</u> which will secure equitable distribution of wealth and opportunity for all in education...</i> ” -Resolution of 14 <sup>th</sup> July 1964 stating premises for appointing the Education Commission.	“ <i>...the <u>acceptance</u> by the Parliament of a <u>socialist pattern of society</u> as the national objective, lend a“ different complexion to the means to be adopted in tackling everyday problems.”</i> ” - (TCPO Policy Note pg.3).

Source: Juneja (2007)

As may be seen in Box 1 above, one of the earliest land policy notes prepared at that time had declared that the function of an urban land policy was to serve as “*a well contrived instrument whose aim is to serve broader social objectives, and the unhampered*

*fruition of National Plans*” (Town and Country Planning Organisation (TCPO), 1962, p.3). This report was also opposed to stratification in society along socioeconomic lines, a similar sentiment was expressed in the recommendation of the Education Commission for a common school in the neighborhood in order to further the development of an egalitarian and integrated society.

This shared outlook in the policies on land and socially inclusive school education were embodied in the policies on grant of Nazul land to private institutions serving public purposes. Institutions such as schools and hospitals were encouraged to support the national effort with the grant of free land to them, on the condition that they would provide free services to a certain percentage of their clientele. In the case of Delhi for example, the contract used by the Delhi Development Authority included the following clause:

*‘17. 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.*

This clause in the land contract, from the perspective of policy studies, proved to be of crucial significance, for unlike education policy, the land policy was translated into legislation, and then into legal contracts for land grants to the schools. Lack of action to implement policy statements can rarely be challenged, but legal contracts are another matter, for their violation can be challenged in courts of law. In this case too, the legal basis of the land contracts allowed the matter of violation of their contracts by schools to be raised in court, although after a lapse of four decades.

### ***Failure of egalitarian school land policy***

Unfortunately the policy of giving free land to the schools, instead of preventing socio economic stratification, ironically and paradoxically, had the effect of nurturing the very monster it was designed to kill. This provision was observed only in the breach (Juneja, 2005) for it was found that private schools profited not only from the free land, but also from the seats that rightfully belonged to the poor, and, as an unexpected bonus, also from the ‘elite club’ like status that their increasingly ‘exclusive’ character further bestowed on them. Sadly, as noted by Juneja (2011) hardly any of the schools which eagerly took the land, remembered to educate the poor in whose name the land had been given and taken.

Equally regrettable is the fact that the government also took little action to ensure that the terms and conditions of land allotment were adhered to. After the matter was

brought to court through *Social Jurist v. Govt. of NCT of Delhi*<sup>2</sup>, a Public Interest Litigation in 2002, an audit by the Comptroller and Auditor General of India noted that “Both the DDA (Delhi Development Authority) as the land owning agency as well as the Directorate of Education as the sponsoring department had failed to fulfill their joint responsibility of ensuring adherence to the terms of concessional allotment of land. No established mechanism for ascertaining breaches of terms of allotment existed so as to enable remedial action (Comptroller and Auditor General of India (CAG), 2005, p.47).

The segregation that is evident in India today, between schools of the rich and other, testifies to the failure of the state to implement its educational policy of common schooling; and also its policy of social mixing in private schools, via its land grant contract clause. It was the disclosure of violation of this mandate over decades that led indirectly to a peculiar turn of events, as discussed by Juneja elsewhere<sup>3</sup>, which culminated in a similar clause being inserted in ‘The Right of Children to Free and Compulsory Education Act 2009.’

### **Cause for New Optimism?**

Having moved from policy statement to national legislation (with the add-on advantage of affirmation of constitutionality by the Supreme Court of India) the accomplishment of this mandate could perhaps now be seen largely as an administrative issue. In order to comply with the RTE Act 2009, the procedure requires all state governments to formulate and notify state level rules and guidelines for the execution of the clauses of the Central Act. In order to facilitate this process, the Ministry of Human Resource Development at the Centre has formulated and posted on its website a set of ‘Model Rules’ which the state governments could use as a guideline or adopt ‘in Toto’.

In the case of Clause 12(1) c of the RTE Act, the Model rules (MHRD, 2010) require state governments to guard that private schools “*ensure that children admitted in pursuance of clause (c) to section 12 (1) shall not be segregated from the other children in the classrooms nor shall their classes be held at places and timings different from the classes held for the other children.*” The rules also propose that the children admitted in the private schools as a result of this clause “*shall not be discriminated from the rest of the children in any manner pertaining to entitlements and facilities such as text books, uniforms, library and ICT facilities, extra-curricular and sports*”

On their part, all state governments have already notified their own state's rules to the RTE Act 2009 and some have even formulated detailed guidelines and rules of procedure for implementation of this clause. Some state governments have been forced by the hostile reactions of the private schools and pleas of parents for intervention to take on the task of the admission process itself. (Sayyed, 2014).

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<sup>2</sup> C.W. No.3165/2002(High Court of Delhi May 17, 2002)

<sup>3</sup> Paper communicated for publication

In fact the expression of awareness and participation of multiple actors in the process of implementation of this clause gives cause for hope that this effort at social mixing in schools will not languish as did previous schemes.

### ***Civil Society and community support***

The clause has inspired the active involvement of a number of NGOs who are monitoring, supporting and overseeing its implementation. In different states and cities, NGOs have been instrumental in goading the authorities to prepare guidelines and institute processes for admission, to create structures and mechanisms to ensure transparency, make information available, create processes for admission that are free from hassles and bias etc. In time, they might be able to procure movement of the bureaucratic machinery to create better structures for grievance redress, integration of children within the schools, and mechanisms to monitor the schooling experiences of children.

The community too has been active in advocacy of the clause, and there have even been reports of marathons being run in support of it (“Children Marathon to seek RTE for the Underprivileged”, 2013). Parents are now eager to enroll their children in schools they could not have dreamed of. After an initial period of hesitation and disbelief, they are coming out vociferously in their demand for fair procedures and efficient administration in admissions to the quota in private schools. (“Chhattisgarh Minister heckled over Admission of EWS students to Private Schools”, 2014; “Parents Allege Quota Lapse”, 2014)

### ***Media magnet***

Media continues to provide oversight to this Act, and apparently more to this clause than others. Stories about this clause may be found almost daily in newspapers (“RTE Complaints in Schools No Longer at Ward Level”, 2014; “No Schedule for RTE Quota”, 2014; “Five years After RTE, Private Schools still to be reimbursed”, 2014; 74% seats under RTE unused, 2014)

### ***Red -tape Accountability***

The systems set in motion by bureaucratic red tape, can in themselves ensure the perpetuation of processes especially if financial transactions, accounting and audit is involved. In the case of this clause, there is a provision that schools in receipt of conditional grants shall not be reimbursed for the admissions they shall henceforth provide. In the past, in many cases, conditional land grants had been made to private schools, but no effort had been made to hold them accountable for fulfilling the terms of their land contract obligations. Each state will now have to identify schools that had received such grants in order to ensure that they are now denied reimbursement for the

children admitted under the RTE Act.

Up to now, private schools and their proliferation represented no additional drain on the state exchequer. Now however, a quarter of the enrolment of every private school will need to be funded at cost to the state, and it is more than likely that this fact may influence decisions regarding future grant of recognition to new schools.

### ***Principals vs Private Managements***

Greatest concerns regarding this clause however, center around ensuring the admission, the learning and the dignity of the children of the poor in the private schools that had first ignored their obligations to the poor (from land legislation); then challenged them in educational legislation in the highest court and failing all, were finally forced to accept them into their schools. For the majority of the private schools, how the schools will treat the children, is worrying indeed, for the fact remains, that, the education, care and well-being of these children as pointed out by Sarin and Gupta (2013), will be dependent on schools which did not want them.

In this challenging situation, hope comes from a recent research study showing that despite resistance from private school principals based “on the logic of the markets that the principals of these schools inhabit” (Sarin & Gupta, 2013, p.2), there is ‘a lot more diversity in the voices of the ‘elite’ than much popular media and scholarly work acknowledges’ (p.18). Their optimism emanates from findings that some educators see quotas ‘as their opportunity to enact their role as social change makers’, and as a chance for educators ‘to act on values and commitments that they otherwise would not have been able to’ (p.20).

Such findings suggest the potential of the agency that such principals possess to act as change makers in the transformation of this legal mandate into new social norms. If principals of prestigious schools endorse such social projects, their inclusive practices could become emblematic of the best schools and could potentially, as new institutionalism theories would suggest, induce mimetic response from others.

Successful school reform worldwide highlights the crucial role of ‘buy in’ by school heads and teachers. Sahlberg (2012) for example credits the reform in the Finnish school system to conversion of the school principals and teachers to a new philosophy of education and new beliefs about children and their ability to learn, before requiring them to employ alternative instructional methods. Similarly Winch (2010) cites an example of a recent successful educational reform in Scotland, where too the aim of school reform was underpinned to the idea of social justice, and the building of a strong consensus around it.

Therefore the combination of forces representing rights holders, duty bearers in schools, state, civil society and media that are involved already in the implementation of this clause give reasonable cause for optimism that social mixing in schools in India, is an idea that is gaining acceptance, and given time might yet result in social reconstruction.

## Conclusion

The challenge to rights based approaches and practices based on beliefs in equality of every child, as this paper has highlighted, continue to be formidable indeed in Indian society, and is reflected in its schools which typically cater to children coming from narrow socio economic bands and is still determined by social group and class, rather than by the implementation of a school map.

In the past decades in India, even as societies flattened elsewhere in the world, the distances between socioeconomic groups and schooling opportunities have only increased. In this context, the clause of the newly enforced 'Right of Children to Free and Compulsory Education Act, 2009' which mandates social mixing through the inclusion of children of the weaker and disadvantaged segments of society into fee charging schools, poses a daunting challenge to policy implementation.

The failure of previous attempts at social construction through symbiotic policies of land allocation to and social expectation from private schools raises concerns for the success of the newly mandated inclusion especially in the wake of open hostility and legal challenge to this clause from private schools.

Optimism for the eventual demolition of socio economically segregated schooling comes, as this paper has pointed out from the awareness, involvement and support of a large number of stakeholders and advocates. Change, and potential for creation of a new inclusive culture has been awakened by the new discourse that "has imposed a debate on issues of social integration and equity in education that private actors have by and large escaped from" (Sarin & Gupta, 2013, p.2), and which may yet serve to "drive home the fact that an educational institution has a social obligation to fulfill," (Mallica, 2005, p.16).

This paper points out that a ray of hope may lie in utilization of the agency of principals and teachers of private schools towards the evolution and institutionalization of normative practices built upon a strong consensus and a belief in the equal right of every child to equality of opportunity.

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