

**Unpacking India's Right to Education Act: The private school free seat provision — potential for increased access and inclusion?**

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### **List of Abbreviations**

|         |                                                              |
|---------|--------------------------------------------------------------|
| ASER    | Annual Status of Education Report                            |
| BPL     | Below the poverty line                                       |
| CORD    | Collaborative Research and Dissemination                     |
| DAMC    | District Admission Monitoring Committee                      |
| DISE    | District Information System for Education                    |
| EDI     | Education Development Index                                  |
| EFA     | Education for All                                            |
| EWS     | economically weaker sections                                 |
| FSP     | free seat provision                                          |
| HDI     | Human Development Index                                      |
| MHRD    | Ministry of Human Resource Development                       |
| MRP     | Major research paper                                         |
| NUEPA   | National University of Education Planning and Administration |
| OBC     | Other Backward Class                                         |
| RTE Act | Right of Children to Free and Compulsory Education Act, 2009 |
| SC      | Scheduled Castes                                             |
| ST      | Scheduled Tribes                                             |
| UEE     | Universal Elementary Education                               |
| UPE     | Universal Primary Education                                  |
| UNDP    | United Nations Development Programme                         |

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## ABSTRACT

India's *Right of Children to Free and Compulsory Education Act, 2009* (RTE) mandates free and compulsory education in a neighbourhood school for all children between the ages of six and 14 years until the completion of elementary education. The RTE Act articulates children's right to education as enforceable by law for the first time in India. A salient feature of the RTE Act is the 25 percent free seat provision (FSP), which mandates private unaided schools to allot, for free, 25 percent of their seats (beginning in Class 1 or pre-primary, as applicable) to children from economically weaker sections and disadvantaged groups. This major research paper critically examines the regulatory framework constituted by the rules that have been notified regarding the 25 percent FSP, taking Karnataka and Delhi as case study states. Furthermore, the study analyses the potential impact of the rules on opportunities for access and inclusion to children from economically weaker and disadvantaged groups. Through the use of critical discourse analysis, several lexical, syntactical and content issues have been highlighted.

The study finds that the rules adopted by both case study states generally constitute regulatory frameworks that comply with the RTE Act. However, there are gaps in terms of capturing multiple identities that children may hold as persistent sources of historical discrimination. Furthermore, the grievance redressal mechanism, the only institutionalised enforcement mechanism in the Act, demonstrates ambiguities and lacks clearly defined roles for authorities, weakening its efficacy.

## CHAPTER 1: INTRODUCTION

### 1.1 Purpose and Research Aims

This major research paper (MRP) investigates the potential of *The Right of Children to Free and Compulsory Education Act, 2009* (RTE Act) to improve opportunities and create conditions that foster inclusiveness and access to education for historically excluded children in India. The study explores the provisions of the RTE Act that mandate private unaided schools to: ‘Admit at least 25% of the strength of the class in class 1 or preschool children, whichever applicable, belonging to [economically] weaker section [EWS] and disadvantaged group in the neighbourhood and provide free and compulsory education till its completion’ (Section 12(1)(c), Government of India, 2009), for free. This provision will be referred to as the 25 percent free seats provision (FSP) throughout the MRP. For the vast majority of children from such backgrounds, accessing private schools was previously infeasible. The purpose of examining the 25 percent FSP is to determine and understand the extent to which rules pertaining to this provision are formulated/constructed in a way that can increase opportunities for access and inclusion to private schools for children from EWS families or disadvantaged groups.

This study investigates the underlying meanings of the rules pertaining to the 25 percent FSP through a content analysis of their wording and lexicon. While the RTE Act is a Central act and is applicable throughout the country, it is up to the states to implement it. Thus, the study is conducted at state level. Firstly, an overall assessment of the rules is conducted to determine what salient rules pertaining to the provision have been adopted at the state level, taking Delhi and Karnataka as case study states. Secondly, their potential as formal institutions to create increased opportunities for access to and inclusion in private schools for children from EWS and disadvantaged groups is analyzed.

The following research questions guide the study:

1. *What rules pertaining to the 25 percent FSP have been adopted at the state level?*
  - a. To what extent do the state-level rules reflect what is articulated in the Central RTE Act and the Model RTE rules?<sup>1</sup>

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<sup>1</sup> Model RTE Rules are provided by the Central government. They serve as a guideline, which can assist states to construct their own rules or amend existing rules to comply with the Central RTE Act. They provide specific actions to be followed towards fulfillment of the provisions mandated by the RTE Act.

- b. How do state-level rules adopted in response to the RTE Act compare with previous state-level regulations for universal elementary education?
- 2. *What is the potential of the rules for increasing opportunities of access and inclusion to private schools for EWS and disadvantaged groups?*
  - a. What themes emerge or can be extracted from the lexicon and construction of the rules?
  - b. How do these contribute to the deeper underlying meanings captured within the rules?
  - c. What impacts can these extracted meanings have for increasing opportunities of access and inclusion to private schools for EWS and disadvantaged groups?

The MRP is organised as follows. The remaining sub-sections of Chapter 1 explain the RTE Act and discuss its relevance and significance to India's education system. The specificities of the 25 percent FSP will be explained, and a rationale/justification will be provided for the importance of examining both the regulatory framework guiding the 25 percent FSP, as well as the importance of private schools within the context of this study. Chapter 2 will provide a selected literature review of topics and concepts, which will serve to frame a discussion regarding the 25 percent FSP rules. Chapter 3 discusses the research design and methodology. Chapter 4 presents the profiles of the case study states. Chapter 5 provides an analysis of the FSP rules and a discussion surrounding the identified themes. Finally, Chapter 6 provides concluding remarks and discusses on the overall implications of the findings.

## **1.2 The RTE Act and Universal Elementary Education**

The RTE Act became effective as of April 2010. Noronha and Srivastava (2013) explain its significance as “the first official Central Government legislation to fully confer the right to education by law and extend it across the country” (p. 7). This landmark law makes education the fundamental right of every child between the ages of six and 14. Furthermore, the incorporation of the words, ‘free and compulsory’, entails the following:

‘Free education’ means that no child, other than a child who has been admitted by his or her parents to a school which is not supported by the appropriate Government, shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing elementary education. ‘Compulsory education’ casts an obligation on the appropriate Government and local authorities to provide and ensure admission, attendance and completion of elementary education by all children in the six to fourteen age group (Ministry of Human Resource Development, Government of India, 2013).

India's attempt at making education free and compulsory is not a new aspiration. It was part of a constitutional commitment that the country intended to achieve by 1960 (Govinda, 2007). Several programmes and policies have been implemented over the years to strive towards achieving this goal. The *Sarva Shiksha Abhiyan* (SSA) is India's flagship programme for the universalization of elementary education (Government of India, 2010). There have also been other Education for All (EFA) and universal primary education (UPE) initiatives, such as the National Literacy Mission and Midday Meal Schemes, which have increased school enrolment (Subrahmanian, 2000).

Although near universal enrolment rates have been achieved, and despite India's constitutional commitment to protect the interests of minorities in regards to education (Wali, 2012), there are still large groups of children who remain excluded. Historic discrimination which impacts access and inclusion, is still faced by vulnerable segments of the population, including children from scheduled caste (SC), scheduled tribe (ST), and EWS groups (Govinda, 2007). These groups require a special focus in order to target and correct for persistent access and inclusion gaps.

The RTE Act is significant within this context because it represents a legislative framework that is meant to operationalize the rhetoric of free and compulsory education. It is no longer simply a policy prescription or guideline. Thus, ideally, the RTE Act can serve as the basis for enabling vulnerable children to realize their rights to inclusion in education. However, its implementation is likely to be complicated, owing to the diversity and complexity of the education system.

### **1.3 The Indian Education System**

The structure of India's education system is diverse, with multiple stakeholders involved in the provision and management of education. Adding to the diversity and complexity of the education system is the decentralization of education administration in India. Education is the joint responsibility of the Central Government and the state or Union Territory governments. The Central Government prescribes national education policies, goals, and programmes, but the states and Union Territories have a relatively high level of discretion in terms of the organization and implementation of education within national frameworks (Govinda, 2011). States are also primarily responsible for funding their respective education systems, and therefore, have also been given a high level of autonomy to govern their own education systems and control inputs (Govinda, 2007).

At the state level, there is a heterogeneous school system consisting of various types of providers. Generally, the structure of the Indian school system is the elementary level from Classes I-VIII, and the secondary level consisting of Classes IX-XII (Govinda, 2011), though there may be slight differences in individual states. The scope of this study focuses only on elementary education, corresponding to the level of education mandated in the RTE Act.

There are three general types of school within the Indian education system – government, private aided, and private unaided (Srivastava, Noronha & Fennell, 2013). Although there has been an expansion of the private sector (both aided and unaided) in recent years, government schools remain the major provider. Government school buildings are publicly owned (Lewin, 2011) and are generally operated by municipal or local governments (Srivastava et al., 2013). However, there is also heterogeneity within the government sector. For example, there are also a smaller number of schools with different foci and targeting different groups, which may be established and run by the state or Central governments. Given, this heterogeneity and decentralization, a truly accurate picture of education provision could only be gleaned by conducting state-wise analyses of the different types of individual providers, and their shares of provision. However, this type of analysis is outside the scope of the study.

For ease of comparison and in line with the District Information Management System (DISE), India's education management information system, this study refers to government schools as those managed by local and municipal governments, the State Education Department, the State Tribal or Social Welfare Department, and the Central government. In 2013, government schools made up approximately 76% of total schools in the country (see Table 1 for breakdown of government schools). Meanwhile, private aided and unaided schools combined accounted for 22% of the share of total schools (DISE, 2014). Of these, 17% were private unaided and 5% were private aided (DISE, 2014). However, it should be noted that DISE data only include recognized private schools, as unrecognized schools are not captured in official datasets. Thus, the actual number of private unaided schools is likely to be greater than what is captured in DISE data (Srivastava et al., 2013).

**Table 1 Breakdown of Government Schools (%)**

| State Education Department | State Tribal/Social Welfare Department | Local Body | Central Government | Other |
|----------------------------|----------------------------------------|------------|--------------------|-------|
| 53.26                      | 4.71                                   | 17.13      | 0.13               | 0.27  |

Source: DISE data from 2012 as reported in 2014

Private aided schools are privately managed. They must cover their own start-up and variable costs, however, they receive a substantial amount of funding from states. This may be up to 95% through government grants, including concessional rates for land (Juneja, 2005; Srivastava, 2008). Due to the high level of state intervention in managing and funding, the private aided sector is more akin to a private-public hybrid model rather than a completely independent private sector (Srivastava, 2008). It should be noted that although private aided schools are included under the RTE Act, their requirements to provide free seats differ from private unaided schools (see Section 12(1)(b), Government of India, 2009).<sup>2</sup> They will not be examined in this study.

Private unaided schools, the focus of this study, are independently owned, managed, and financed. They have a variety of forms of operation and this sector is highly heterogeneous (Srivastava, 2008). Along with the diversity of operations there is also a variety of fee structures, ranging from low-fee to high-fee elite schools (Srivastava et al., 2013). In its idealized form, the 25 percent FSP involves the private sector in contributing to the government's mission of achieving higher overall levels of education, and expanding inclusion and access to education, thus making private schools participants in the process of challenging and mitigating social exclusion and inequity. This is a responsibility, critics say private schools had largely abdicated in the past (Sarin & Gupta, 2013). As a result, the rules that states adopt to govern private schools will have a significant role in shaping how the RTE Act is disseminated and implemented.

## **1.4 Privatization and the Role of Private Schools**

### **1.4.1 The Role of Private Schools**

The focus on and importance of private schools warrants a discussion on privatization and the role it has recently played in Indian education. Literature suggests that the government education sector in India and many other developing countries has been decaying due to under-investment (Mahajan & Goyal, 2005). This has created a gap in the public school system between expectations of education delivery and the actual delivery of education, with added problems of quality (Mukherjee, 2005). Furthermore, the government has not been able to make substantial progress towards remedying inequities and social exclusion experienced by many historically

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<sup>2</sup> Section 12(b) of the RTE Act stipulates that private aided schools “shall provide free and compulsory elementary education to such proportion of children admitted therein as its annual recurring aid or grants so received bears to its annual recurring expenses, subject to a minimum of twenty-five percent” (Government of India, 2009).

disadvantaged groups (Subrahmanian, 2009). These circumstances create other negative impacts such as low attendance rates, high dropout rates, and low employability (Subrahmanian, 2009). According to several scholars, these factors have created an environment that is conducive for the rise of private schools as a response to persistent failure of the government to provide quality education and sufficient access (Goyal & Jayashankar, 2010; Humayun et al., 2013). This is not to suggest that private provision always yields better quality education. Given the variation in types of private schools and the contexts within which they operate, claims about quality should be taken cautiously (Akyeampong & Rolleston, 2013).

Despite variations in quality, the rise of the private sector in India is forecasted to continue (Sarangapani et al., 2014). DISE data indicate that almost 29% of elementary school children in India were enrolled in private schools in 2013. Based on information from the nationally representative 2012 Annual Status of Education Report (ASER) on rural areas, Sarangapani et al. (2014) claim: “by 2019 the government school system would be relegated to a secondary status in providing primary education” (p. 9).

The private sector has even targeted some relatively poorer segments of the population who are accessing private schools termed, “low-fee private” schools (Srivastava, 2006; 2007; 2008). Although the private sector is a provider for some among the relatively poorer, these schools do not necessarily cater to the poorest (Walford, 2013). The poorest and most disadvantaged groups still mainly access government schools (Govinda, 2007). Nevertheless, this may indicate that there is a perception among some that private schools are responding to demand where government schools may be falling short (Sarin & Gupta, 2013). This is reflected in the increased enrolment of students in private schools over the years.

Furthermore, the Government of India has expressed its support in expanding the role of the private sector in elementary education. In its Twelfth Five Year Plan, the Government called for the increased role of the private sector and encouraged private investment in education (Planning Commission, 2013).<sup>3</sup> One proposed strategy for increasing the role of private schools is to facilitate the entry of private institutions into the education sector by “easing the regulatory

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<sup>3</sup> The Indian economy has been premised on centralized planning. Five-year plans are integrated and centralized national economic programs, which were developed, executed, and monitored by the Planning Commission. The Eleventh Five Year Plan was completed in March 2012, and the Twelfth Five Year Plan is currently being implemented (until 2017) (Government of India, Planning Commission, 2013). It should be noted, however, following the recent Indian elections, the Planning Commission was dissolved and replaced by the National Institution for Transforming India (NITI) Aayog in January 2015 under Prime Minister Narendra Modi (Government of India, 2015b). As such, the direction and allocation of resources under the Twelfth Five-Year Plan may be changed under the NITI Aayog.

restrictions” (Planning Commission, 2013, p. 64).

In order to make a conscientious effort towards implementing the RTE Act, states have a responsibility to provide clear and timely regulations. Initial findings regarding early issues with RTE implementation show poor “regulatory readiness” in the capital region of Delhi, where there was neither a clear nor timely regulatory framework in the first year of implementation, despite it being the political centre (Noronha & Srivastava, 2012). Further examination and analysis in this study will provide a better understanding of how the 25 percent FSP is being interpreted at the state level, and how rules in the selected states compare to the provisions outlined in the Central RTE Act.

#### 1.4.2 Early Findings on Private School FSP Adoption

If state-level interpretation of the 25 percent FSP represents a variation or inconsistency with the RTE Act’s provisions, it can allow for actions which represent a deviation between the intended vision and the actual outcomes, i.e., “unruly practices” (Kabeer, 2000), to arise. Unruly practices represent the gap between rules and the manner in which they are implemented, which allows for unofficial norms to develop (Kabeer, 2000). In this context, unruly practices can shape how the provisions pertaining to the 25 percent FSP are implemented in practice. They can also mediate how EWS and disadvantaged groups access private schools. Thus, state-level rules that are vague or inconsistent with the Central RTE Act can allow for unruly practices to act as exclusionary mechanisms.

One approach the government has taken to combat unruly practices is to attempt to subsidize private schools. Private schools are to be reimbursed for each child that is enrolled under the 25 percent FSP “at the level of state expenditure per child or tuition fee charged at the school, whichever is less” (Section 12(2), Government of India, 2009). Although reimbursement is one way that the government can seek to ensure compliance from private schools, literature suggests that some private schools are still resistant or hesitant (Jain & Dholakia, 2009; Jha & Parvati, 2010; Sarangapani et al., 2014; Sarin & Gupta, 2013; Tucker & Saghal, 2012). Several reasons are posited to explain private school resistance, including a general sense of mistrust of the government (Tucker & Saghal, 2012). Another source of frustration is discontent with not being informed and involved in the process guiding how the provision is to be implemented (Jha & Parvati, 2010), with some claiming that a lack of consultation rendered private schools passive participants in the provision’s implementation rather than involved partners (Sarin & Gupta,

2013). In some cases, resistance is also attributed to the market mindset of the leadership in many private schools who contend that those who do not pay fees do not value education (Sarin & Gupta, 2013).

This mindset is also based on the perception of some school leadership that the 25 FSP lowers the value and reputation of their schools, thereby lowering the quality of the school, and that it also lowers the value placed on education (Sarin & Gupta, 2013). This type of “devaluation” of the education imparted at private schools can lower its perceived market value for parents of fee-paying students. According to Sarin and Gupta (2013), some private school principals also stated that resistance was due to retaliation that schools were facing from the parents of fee-paying students.

As a result of these multiple sources of resistance, parents from EWS and disadvantaged groups can face many hurdles in their attempts to secure a place under the 25 percent FSP. Given the increased responsibility on private schools to share in imparting education, there is an impetus to examine the role of private schools and their potential actions as guided by the rules or navigation of the rules. This is relevant in terms of analyzing the influence that private schools have on the possible implementation and resulting outcome for the RTE Act.

#### 1.4.3 Discourse Surrounding the Privatization of Education

Increased demand for education inclusion is often used as a platform to validate the need for private education providers (Goyal & Jayashankar, 2010). Thus, the case for privatization is made on the basis that it is a means for increasing access to the weakest, most disadvantaged segments of the population. This is done by some, through the formulation of privatization as a tool for empowerment where the government has failed to serve the needs of the most vulnerable (e.g., Tooley, 2004). From this perspective, privatization combats social exclusion, improves equity, and allows for increased social mobility by improving efficiency and quality (Tooley & Dixon, 2006).

This type of rationale for privatization is an example of how discourse can be galvanized through “mobilizing frames” (Srivastava, 2010), or “ways in which global educational problems and their solutions are talked about and used to legitimate and motivate collective action” (Mundy & Murphy, 2001, p. 91). However, by incorporating other literature into this discussion it can be posited that the above-mentioned discourse of empowerment and social inclusion through

privatization of education fails to adequately integrate the experiences of socially excluded groups, that go beyond simply increasing enrolment rates (Kabeer, 2000; Sayed & Soudien, 2003; Srivastava, 2008; 2010; Subrahmanian, 2009).

In this sense, social inclusion is narrowly interpreted and does not take into consideration continued experiences of social exclusion within the classroom. This view of social inclusion leans towards measurements that incorporate quantitative or numerical targets which can lead to approaching education as an economic rather than a social interest (Apple, 2005; Srivastava, 2010), or from a human capital approach rather than a rights-based approach (Tikly & Barret, 2007). Thus, in addition to examining how rules are constructed to incorporate economic and social aspects in achieving the vision of the RTE Act, a further concern of the study is whether the language and lexicon regarding 25 percent FSP are transformative (see Section 2.3 for elaboration).

### **1.5 Significance of Studying the Regulatory Framework**

Although it is beyond the scope of the study to assess state adoption of the Act and the rules in practice or implementation experiences, it is nonetheless relevant to investigate the rules pertaining to the 25 percent FSP because they have the potential to influence state-level actions. Actions and behaviours, in turn, lead to certain outcomes. This demonstrates the importance of not just discussing the implementation of the 25 percent FSP, but also considering factors that may influence how implementation plays out — the rules constituting the regulatory framework, being one of the key influential factors. In short, rules can help connect visions and outcomes (North, 1990).

Table 2 presents a proposed relationship model that connects vision, rules, and outcomes within the context of this study. It explains how the rules may have the potential to increase opportunities for access and inclusion by providing specific instructions that guide how the vision of the RTE Act can be practically applied in order to achieve outcomes. The content and underlying themes/meanings of the rules can impact what actions and behaviours are taken by various stakeholders involved, and accordingly, what outcomes result from certain actions or behaviours. Different constructions and lexical formations can have an impact on how the rules capture the vision of the RTE as well as how they are interpreted at the state level.

**Table 2 Proposed Model of Vision, Rules, and Outcome Chain**

| VISION                                                                                                                                                                                                                                                                                                                                                                                                         | RULES                                                                                                                                                                                                                                                                                                                                                                                                                     | OUTCOME                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>Broadly, the RTE Act's vision is to achieve the goals of free and compulsory education by expanding opportunities and creating conditions that foster inclusiveness and access for all children in India.</b></p> <p><b>Specifically, for this study of the 25 percent FSP, the vision is to increase opportunities of access and inclusion to private schools for EWS and disadvantaged groups.</b></p> | <p>The <b>rules</b> outlined regarding the 25 percent FSP are the formal institutions, which have a role in governing the actions of the stakeholders involved.</p> <p>They can be the impetus to create changes, which help to move policy visions towards practical outcomes.</p> <p>The manner in which the rules are formulated impact their potential to create increased opportunities of access and inclusion.</p> | <p><b>Outcomes</b> are produced by specific actions or behaviours taken by state/local government, private schools, and EWS/disadvantaged group parents and children</p> <p>Actions and behaviours can be influenced by the parameters set by rules (formal institutions).</p> <p>Actions and behaviours can either be towards compliance of the rules or to evade the rules via unruly practices*</p> <p>The desired outcome is where: actions + behaviours = achievement of RTE Act vision.</p> <p>Any other outcomes represent a divergence from the RTE Act in theory.</p> |

*Note:* \* Unruly practices represent a gap between rules and their implementation (Kabeer, 2000). This will be described further in Section 2.2.3 below.

The interplay between institutions and the associated institutional actors, which is summarized above, can be explained using new institutional theory (see Section 2.5.1 for further explanation). The rules comprise the formal institutional framework. In this case, they are set by the government and act as the official 'rules of the game'. Private schools are the 'players of the game', and are attempting to 'win' in terms of being successful education providers. Parents and children from EWS and disadvantaged groups are individual actors navigating within formal institutions and private school options (North, 1990; Srivastava, 2008). Together, the actions and behaviours of all three actors – government, private schools, and individuals — have an influence on the outcome.

To allow for ease of analysis, this study posits an idealised model whereby private school compliance is assumed. It is recognized, however, that in reality there will be a number of deviations or mediations that will take place both at the level of the state and sub-units of the state (i.e., districts, blocks, municipalities, villages, etc.), and at the school level. This will result in a less than ideal model of compliance (Srivastava, 2008). Furthermore, the scope of the study does not allow for analysis of the actual implementation. However, if there are gaps or discrepancies between the state-level FSP rules as compared to what is outlined in the Central RTE Act and Model Rules, it is posited that the possibility for unruly practices or divergent outcomes

increases. These would represent a deviation from the intended ideal outcome, which sees an increase in opportunities of access and inclusion for EWS and disadvantaged groups.

## **CHAPTER 2: SELECTED SUBSTANTIVE AND CONCEPTUAL LITERATURE**

Chapter 1 has integrated the topic-based literature surrounding the RTE Act. The beginning of this chapter focuses on the limited emerging literature on the adoption/implementation of the RTE Act. The remaining bulk of the chapter outlines the literature on the conceptual framework for this study, key in informing the analysis of the regulations.

### **2.1 Implementing the Twenty-Five Percent Free Seat Provision**

The existing limited literature on state adoption of the 25 percent FSP shows varying degrees of progress. This is in line with state-level implementation of the RTE Act as a whole, which is still in the early phases. Srivastava and Noronha's (2013) early study on the experiences of 290 households in a Delhi slum area revealed that students who accessed the allotted private school seats under the 25 percent FSP did not access them on a free basis. In fact, there were substantial costs associated with attending private schools under the provision. This is not in accordance with the legal specifications of the RTE Act, and does not capture the vision of inclusion intended by the FSP.

Other literature on state progress in interpreting and adopting the 25 percent FSP also reveals mixed experiences. Although most states have undertaken preparatory activities to adopt and implement the RTE rules, Gujarat and West Bengal had not notified any rules regarding the RTE Act as of 2013 (Soni, 2013). In contrast, Odisha had taken steps to identify non-enrolled children through surveys, which allows these students to be accounted for under the quota (Soni, 2013). Of significance here, Ulas (2014) found 71,000 of the allotted seats in Karnataka in the 2012-2013 school year remained empty. Furthermore, some of the poorest did not even know about the 25 percent FSP (Ulas, 2014). On the other hand, Soni (2013) reports that Andhra Pradesh attempted to counter low awareness of the poor by organizing awareness campaigns. Finally, some schools also claimed ignorance, as in Tamil Nadu, where some were reportedly unaware of the RTE Act and had yet to take steps towards implementation as of 2013 (Sama Kalvi Iyakkam, 2014).

It is expected that there will be nuances among the various state rules due to the decentralized nature of India's administrative system. In this system, local context is relevant and may attribute differences among individual state rules. However, even within different local contexts, specificities and details encompassed within state regulations remain important. Loosely

described provisions and vagaries can be a point of concern (Sayed & Soudien, 2003), which is significant because there is more to inclusion “than simply counting who is in or out of school” (Govinda, 2007, p. 7). Children who are out of school or excluded from school can come from a diversity of socio-economic backgrounds, and possess different personal characteristics and experiences, which inform how they interact with the school system (Govinda, 2007).

## **2.2 Conceptual Framework**

### **2.2.1 Education Policy Approaches**

As highlighted in Chapter 1, the significance of the RTE Act is that free and compulsory education has now become a legal requirement rather than a policy prescription. Although this is a critical distinction from former universal education policies, it is useful to consider how various approaches to education policy may influence the adoption and articulation of the 25 percent FSP. It is important to evaluate education policy discourse because it has an impact on how state-level education is envisioned, and how regulations are formulated. Although legal instruments are the strongest formal institutions meant to uphold rights, former education policies likely serve as resources which the state might draw from to notify rules regarding the 25 percent provision, acting as familiar guidelines as states attempt to move from policy to law.

There are multiple approaches to education policy that can influence the discourse and the way in which education is conceptualized and governed. Broadly, education policy can be constructed as *affirmative* or *transformational* based on how the policy navigates the existing framework (Kabeer, 2000). An affirmative approach to policy design seeks to correct or atone for past injustices within the existing framework, whereas, a transformative policy design aims to correct past injustices by modifying the existing framework within which injustices have existed and been perpetuated (Kabeer, 2000).

Beyond these broad approaches, there are specific discourses within the education policy space. The rights-based approach views every human being as a rights-holder. It is based on international human rights standards and promotes the realization of these rights (UNICEF, 2013). Rights can be defined in terms of civil, social, and political rights (Klasen, 1999; Room, 1995). This approach is evident in the RTE Act as it is based on the *right* of all children (between the ages of six and 14) to free and compulsory education. The RTE Act is premised on the notion

of education as a right, which arose from the dominant discourse of EFA and UPE that has been prevalent in India (and internationally) for many years (Subrahmanian, 2009).

This approach closely aligns with Amartya Sen's (1998) capability approach, which includes having the right to fulfill basic capabilities that allow for participation in community and public life as well as integration into society. The rights-based approach de-emphasizes economic status and focuses on the capabilities that people enjoy (Sen, 1998). However, contrary to Sen's separation of income and capability deprivation, the rhetoric surrounding and justifying UPE and EFA initiatives prominent in Indian education discourse frames education in terms of its economic returns. In this context, education is discussed in terms of human capital theory (Subrahmanian, 2009), which is an economic rather than a purely rights-based or social justice approach.

Human capital approaches emphasize the economic rationale for investing in education (Tikly & Barrett, 2009). The economic approach discusses education as an engine for growth in terms of externalities such as productivity and human capital accumulation (Beall, 2002). Education is seen as an investment, where the rates of return are economic benefits, such as increased wages contributing to stronger labour markets and an improved macroeconomic environment (Tikly & Barrett, 2009). The various approaches that inform education policy have a direct impact on the way in which regulations are articulated. Consequently, it is important to include these approaches into the discussion of the 25 percent FSP because the type of language and lexicon that are used as building blocks to formulate rules may draw from the rhetoric within prevalent discourses surrounding education.

### 2.2.2 Procedural Justice and Legitimacy

The role of procedural justice and legitimacy are important concepts in terms of assessing the strength of state-level RTE rules, and specifically, regarding the grievance redressal procedure as an enforcement mechanism. Procedural justice refers to the perceived fairness entrenched in the procedures and criteria used by decision makers in reaching the outcome of a dispute or negotiation (Leventhal, 1980; Lind & Tyler, 1988; Thibaut & Walker, 1975; Tyler, 1989). Procedural justice posits that individuals are not concerned merely with decisions or outcomes, but also with the process and steps taken to determine the outcomes or reach a final decision (Cropanzano & Randall, 1993).

The perceived fairness in the steps taken to reach an outcome or decision constitutes procedural justice, and can generate legitimacy (Hough, Jackson & Bradford, 2013; Bradford, 2014; Papachristos, Meares & Fagan, 2012; Blackwood, Hopkins & Reicher, 2013; Stott, Hoggett & Pearson, 2012). Additionally, two key aspects that affect procedural justice are fairness of the decision-making processes (i.e., processes that are neutral, transparent, and allow voice or the active participation of all the involved parties), and fairness of interpersonal treatment (Antrobus et al., 2015; Ericson, 1975). Procedural justice encourages the belief that institutions/enforcement mechanisms have a just and valid basis of legal authority (Papachristos, Meares & Fagan, 2012). Procedural justice also suggests that when people perceive that authorities are treating them with fairness, dignity, and respect they are more likely to view authorities as legitimate.

Thus, when law enforcement or enforcement mechanisms are viewed as the legitimate holders of power, people are more likely to accept the results of outcomes of the process (Bradford, Murphy & Jackson, 2014). Legitimacy exists in the eyes of individuals, partly when they believe that an institution has a positive right to dictate appropriate behaviour. Therefore, legitimacy is perceived - it is “in the eye of the beholder”. The belief that power is rightfully held and exercised is also perceived by individuals, where the right to power exists in the eyes of individuals partly when they believe that the institution acts in ways that are justified and appropriate to the circumstances (Hough et al., 2013; Jackson, Hough, Stares et al., 2013).

In terms of the grievance redressal mechanism for the RTE Act, procedural justice and legitimacy could include the quality of interaction between local authorities and complainants, as well as the perceived quality and timeliness of decision-making. For parents, transparency in the rules, which guide the decision-making process, can have an impact on the perceived quality and fairness of the decisions. Understanding the process and steps involved, as well as the responsibilities of the local authority can reduce uncertainty, which may alleviate parents’ feelings of mistrust or fear. When there is greater trust in the process, there is a greater chance for complainants to perceive the process and the power of local authorities as legitimate. This is especially important for local authorities because their legitimacy to dictate behaviour and resolve problems related to the 25 percent FSP is critical to the agency of the grievance redressal process.

### 2.2.3 Social Exclusion and Institutions

The concept of social exclusion is widely used to frame policy discussions in the Global North (Sayed & Soudien, 2003). However, this concept is also relevant in the Indian context as there has been a persistence of social exclusion within education. There is both segregation within and segmentation among the types of schools children from different social backgrounds have access to (Ramachandran & Noerem, 2013). As Ramachandran and Noerem (2013) conclude: “many upper class and caste children do not attend government schools; government schools typically cater to children from economically weaker segments and historically disadvantaged groups such as Scheduled Caste, Scheduled Tribe, and Dalit” (p. 44). In such a context, institutions such as education laws and regulations can help to define and expand the parameters of inclusion, as well as the type of access that is afforded to different segments of the population (Subrahmanian, 2009).

Despite the usefulness of social exclusion in framing policy discussions, questions are being posed about its applicability in the Global South, and specifically regarding the value-added of social exclusion as an approach to complex and multidimensional phenomena such as poverty (Kabeer, 2000). There are merits of focusing on the process of social exclusion in terms of understanding how social interactions create or perpetuate disadvantage (Mamdani, 1996). This can be particularly useful for the analysis of legal instruments, such as the RTE Act, meant to correct processes that allow disadvantages to prevail. Kabeer (2000) contends that the value-added of the concept of social exclusion is at the institutional level.

Institutions can be both formal, such as laws and policies, and informal, such as social norms of behaviour, conventions, or codes of conduct (North, 1990). Together, these formal and informal institutions, and their enforcement mechanisms, shape ‘the rules of the game’ (North, 1990). It should be noted, that institutions are not necessarily created to be socially efficient (i.e., to minimize or remove transaction costs), they are humanly devised constraints created to serve the interests of those who possess bargaining power to devise new rules (North, 1990, p. 7). Thus, institutions can influence patterns of exclusion or inclusion (Kabeer, 2000). Institutions do not necessarily cause patterns of social exclusion. However, in certain instances, patterns may be based on how the rules are framed and how norms are imbibed (Kabeer, 2000).

Within the context of the RTE Act, it is the policy makers who have the power to devise new rules. The social distance between these policy elites and the disadvantaged groups for whom

rules are meant to serve or benefit contextualizes the manner in which norms become imbibed and accepted (Srivastava, 2014). Thus, certain groups may be defined relative to other groups and be positioned based relative to these comparative characterizations (Sayed & Soudien, 2003). As a result, there is an accepted perception that certain groups inherently lack access and need targeted laws or policies, and enforcement mechanisms to ensure their inclusion (Klasen, 1999). In the case of the 25% FSP, a grievance mechanism, if included and properly articulated, is an example of an enforcement mechanism that can allow those attempting to access private schooling through the provision to seek compliance and to realize their legally endowed right.

The legally endowed right conferred by the 25 percent FSP is premised on the basis of increasing opportunities for groups historically positioned as excluded from education, and additionally, from private schooling. However, this is quite simplistic and does not fully address the underlying issues that lead to exclusion or inclusion. Viewing social exclusion and inclusion as dichotomous can, in turn, simplify the types of laws or policies that might be envisioned as solutions to overcoming exclusion (de Haan, 2000). Taking such a view, solutions would simply involve changing how groups of people are positioned from a state of exclusion to a state of inclusion (Rogers, 2000). These types of solutions can often be inadequate.

For example, in South Africa, black students that were integrated into formerly white schools were expressly moved from a state of “exclusion” to one of “inclusion”. However, they still faced hostile environments within schools (Jansen, 1998). This example illustrates a policy that aimed to correct historical imbalances, but did not fully address the issue of social inclusion. This is often the case when the concepts of social exclusion and inclusion are oversimplified and result in “cookie cutter” or “one size fits all” solutions. It is important to recognize different types of inclusion as these can inform the approaches taken to addressing social exclusion, and the extent to which these solutions actually make a difference for those who are targeted.

In India, these types of solutions require careful consideration since a variety of factors arising from economic vulnerability, such as insecure livelihoods, social discrimination, and political marginalization, have combined to perpetuate historical education disadvantages (Ramachandran & Noerem, 2013). When “people, whether as individuals or groups, are portrayed in ways that fail to work with the multiple interests, identities and perspectives that give life to their everyday realities” (Sayed et al., 2003, p. 232) institutions can fail to adequately address social exclusion. Within this context, education can be an instrument for social mobility, but also a means of social selection (Sayed & Soudien, 2003). Thus, schools can act as sites for inclusion and exclusion

(Goyal & Jayashankar, 2010). They can foster increased social cohesion, or they can be used by elites to retain power and influence (Humayun et al., 2013). Therefore, identities must be understood beyond a dualistic paradigm.

Fraser (1998) identified two different forms of social exclusion or “disadvantage” – economic and cultural. Economic exclusion results from “economic injustices such as marginalization, exploitation, and deprivation” (p. 102). Cultural exclusion is “manifested as dominant groups making certain groups invisible within the dominant discourse, seeking to impose dominant values, or consistently devaluing certain categories of people” (Fraser, 1998, p. 102). These two forms of social exclusion are not mutually exclusive but tend to be linked. Mamdani (1996) uses the post-colonial African context to show the intersection of economic and cultural exclusion in which race (an element of culture) played the central role, and the colonial structure segmented people into different economic groups.

Although different forms of social exclusion tend to be interrelated and are sometimes inseparable, each has its own set of strategies for mitigation (Kabeer, 2000). Economic exclusion strategies typically entail disadvantaged groups to focus on interests that demand redistribution (Fraser, 1998). Cultural exclusion entails disadvantaged groups to focus on issues of identity and demand recognition (Fraser, 1998). The type of exclusion created by India’s caste system is an example of the interplay of what has been termed, “bivalent collectives”, where economic exclusion is bound to cultural valuation (Kabeer, 2000). In this case, both redistribution and recognition strategies are relevant.

Regarding the 25 percent FSP and the RTE Act as a whole, both redistribution and recognitions are key strategies for remedying the persistent exclusion of certain groups. Inequitable opportunity regarding the right to schooling has been caused by economic and cultural exclusion. Thus, access to schooling (and private schooling) may be seen as affected by economic exclusion, i.e., certain groups lacking sufficient funds, and cultural exclusion, i.e., being part of groups that have historically been made invisible in their positioning within the hierarchy of the caste system.

Understanding different forms of social exclusion is particularly relevant within the context of this study as there are different sources of exclusion at play for many children in EWS and disadvantaged groups. For example, a child’s historical positioning vis-à-vis the institutional framework and domains of social, economic, and political life also contribute to various sources of social exclusion. Further to this point, the Planning Commission’s (2013) Twelfth Five-Year

Plan acknowledges that even within the broad SC and ST categories, there are certain groups that are more disadvantaged than the category as a whole. The existence of multiple identities and the presence of different sources of exclusion underscore the importance of not just what is said, but *how it is said*. This affects how the many different sources of exclusion may be considered and captured within the regulations.

In addition to different forms of exclusion, there are different *mechanisms* of exclusion. These must also be considered in institutional formulation and analysis. Kabeer (2000) identifies three specific exclusionary mechanisms: (1) institutional bias, (2) social closure, and (3) unruly practices. Institutional bias can occur in the absence of a conscious decision by those who are in the preferred position (Luke, 1974), and is defined as:

A predominant set of values, beliefs, rituals and institutional procedures ('rules of the game') that operate systematically and consistently to the benefit of certain persons and groups at the expense of others. Those who benefit are placed in a preferred position to defend and promote their vested interests (Luke 1974, p.17).

Social closure is when social collectivities deliberately seek to maximize rewards by restricting access to resources and opportunities to a limited circle of those who are considered eligible (Parkin, 1979). Finally, unruly practices "represent the gap between rules and their implementation, which occur in practice in all institutional domains" (Kabeer, 2000, p. 92).

All three exclusionary mechanisms have been present within Indian education. Institutional bias has allowed segments of the population who are in positions of privilege, due to their economic status or social hierarchy, to benefit from higher quality schooling, including the elite private sector. This is related to the elitist oriented education system (Fraser, 1998; Mamdani, 1996), which was established during India's colonial past, remnants of which continue to prevail. In the current context, many private schools perpetuate social exclusion through social closure, whereby restricting access and opportunities to a limited group who can afford to pay fees, and in most cases, fees that are extremely high for disadvantaged groups. Furthermore, unruly practices have perpetuated the cycle of privilege for some and exclusion for others because education as a public good has not been allocated strictly according to the rights-based approach. Instead, unofficial norms have continued to mediate the ability of economically weak and disadvantaged groups to gain access and inclusion to education, a right to which they are entitled (Kabeer, 2000; Parkin, 1979; Ramachandran & Noerem, 2013).

These exclusionary mechanisms, along with the conceptualization of social exclusion, should be recognized and understood in order to move past a narrow technicist definition (Srivastava,

2010). This has a direct influence on how state-level regulations can be compared to the provisions outlined in the Central RTE Act and Model Rules, and how the language within state rules can be analyzed regarding their affirmative or transformative nature. More specifically, the intent of the RTE Act is to challenge discrimination and social exclusion of economically and socially disadvantaged groups, who have been excluded on the basis of several aspects connected to their identities, and how their identities are positioned. Thus, a key aspect of the study is to analyze how/whether case study states conceptualized their rules to consider multiple identities, and how/whether expressed identities may interact with different forms and mechanism of exclusion.

## **CHAPTER 3: RESEARCH DESIGN, METHODOLOGY, AND METHOD**

### **3.1 Overview and Research Design**

This study will build from and contribute to Prof. Prachi Srivastava's larger research project on the right to education and non-state actors in India.<sup>4</sup> One of the aims of the broader research project seeks to analyze the implementation of the RTE Act at the institutional, school, and household levels, and whether access to schooling continues to be stratified post-implementation of the Act. Research in India is being conducted in collaboration with CORD, a local partner. This MA study will contribute to research at the institutional level by focusing on state-level adoption of the 25 percent FSP of the RTE Act in two selected states, and the potential of the regulatory framework in those states to affect opportunities for greater access and inclusion.

This study employs an instrumental case study research design. An instrumental case study is an approach that constructs a detailed overall description of the case being observed for the purposes of studying a broader issue/phenomenon (Creswell, 2013). For this study, the case is defined as the regulatory framework surrounding the 25 percent FSP at the level of the state. The analysis will focus on: (1) the RTE rules that have been adopted at the state level; and (2) how the state-level rules compare to what is mandated in the Central RTE Act and Model Rules.

### **3.2 Selection of Case Study States**

Karnataka and Delhi were selected as the case study states. Having more than one state allows the analysis to contrast and compare differences and similarities between state-level rules, and also to draw comparisons in relation to the Central RTE Act and the Model Rules. The states were selected from a broader potential list developed by the larger research team, and based on the main project's methodology.

This involved using the composite education development index (EDI) developed by the Government of India's Ministry of Human Resource Development (MHRD). The EDI tracks progress in all the 35 states and union territories regarding UPE goals with the purpose of determining the comparative status of states regarding different aspects of the universalization of education. The composite EDI values are normalized values between 0 and 1, representing

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<sup>4</sup> The full title of the project is 'Right to Education and the Emergence of Non-State Actors: the Case of India'. It is funded by the Social Sciences and Humanities Research Council.

performance across four broad indicators: access, infrastructure, teachers, and outcomes. Each indicator consists of several variables within the four broad categories (see Appendix 1 for further detail on indicators).

Based on each state's EDI rank, the research team grouped states into three intervals: 'best performing states' (10 states), 'mid-performing states' (15 states), and 'low performing states' (10 states). From the ranked list, the specific states for this MA study were selected based on their EDI performance, private school enrolment rates, and prevalence of private schools within the state. The initial design for this study sought to select one high-performing and one low-performing state for maximum contrast, in addition to Delhi. Based on the criteria above, Karnataka was selected as the high-performing state. Madhya Pradesh was initially considered as a suitable choice for the low-performing state. However, due to linguistic problems in accessing relevant documentation pertaining to its RTE rules in English, it could not be included.

Delhi was meant to be a main focus of this study all along, as it is the political centre of the country and the first to implement the RTE Act. It was further relevant as the larger project is conducting in-depth household-level research regarding schooling access post-RTE. Institutional-level work had also been previously done by the research team in 2011-2012 to review the initial phase of implementation of the RTE Act (Srivastava & Noronha, 2014). Therefore, selecting Delhi would allow for further examination to determine how or whether there has been a change in the institutional structure.

Delhi ranked sixth out of 35 states and union territories, with an EDI value of 0.705 (DISE, 2014) and, like Karnataka, is considered a high-performing state. Based on DISE (2014) data, private unaided schools accounted for 42.8% of total schools in Delhi in 2012, and private unaided school enrolment accounted for 40.5% of total school enrolment. Karnataka ranked fifth on the composite EDI, with an index of 0.71 (DISE, 2014). Additionally, it has a high proportion of private school enrolment. According to the latest available DISE (2014) data, 20.2% of schools in Karnataka were private unaided, and 37.7% of total enrolment was in private unaided schools in 2012. Thus, the proportion of enrolment in private unaided schools is almost double the share of total private unaided school supply. Table 3 provides the proportion of schools and enrolment in Delhi and Karnataka by management type.

**Table 3: Proportion of Primary Schools and Enrolment by Management Type**

| State     | Share of Schools by Type (%) |                 |               | Enrolment Share (%) |                 |               |
|-----------|------------------------------|-----------------|---------------|---------------------|-----------------|---------------|
|           | Government *                 | Private Unaided | Private Aided | Government          | Private Unaided | Private Aided |
| Delhi     | 52.5                         | 42.8            | 4.6           | 62.5                | 40.5            | 2.6           |
| Karnataka | 75.0                         | 20.2            | 4.8           | 51.3                | 37.7            | 9.1           |

Source: DISE (2014), data for 2012

Note: \*: Government schools include schools managed by State Department of Education, local body, Central Government, and other government managements.

### 3.3 Methodology

#### 3.3.1 Methodological Approach and Rationale for Critical Discourse Analysis and Systemic Functional Linguistics Techniques

Critical discourse analysis and systemic functional linguistics were chosen as the methodological approaches to help deconstruct the underlying meanings of legal texts. There are two aspects of critical discourse analysis, the critical aspect and the discourse aspect. The “critical” aspect entails that thought is mediated by historically created power relations (Wodak & Meyer, 2009). This also includes an understanding that “facts” are not neutral because they are always embedded in contexts (Wodak, 2001). The “discourse” aspect refers to the use of language as a social practice that reflects and constructs the social world. Language, therefore, is not neutral as it has social, political, racial, economic, and cultural formations (Rogers et al., 2005).

Thus, the language used to formulate the content and rules pertaining to the 25 percent FSP, can be analyzed in terms of what context certain words have in relation to describing and attaching meaning to the concepts of inclusion and access. When conducting a content analysis of state rules, examining lexicon is necessary in order to determine if there are any apparent patterns or trends in the language that might suggest what sort of discourses are embedded within the rules. This, in turn, can be a rational starting point for examining the impact of legal texts on the power relations in case study states, and how this may affect opportunities for inclusion of EWS and disadvantaged groups.

This type of language and wording analysis is based on the idea of systemic functional linguistics. This approach posits that as language users, we choose from the meaning-making potentials that are available to represent and create dialogue. Therefore, language can also be seen as a creative space (Fairclough, 1995). The language and lexicon used to construct rules, define rights, and describe various groups in each state’s framework are important because they demonstrate that it

is not just what is said that needs to be critiqued, *but the way in which it is said*. It is also equally important to examine what is omitted, because what is not said can have an impact on access and inclusion if it silently excludes certain groups by not explicitly articulating their rights. The systemic functional linguistics approach will guide in examining the actual words used in the rules, and how those words are used to construct a meaning. Word choice reflects something deeper about how rules can be used, and whom the rules are truly intended to benefit (Fairclough, 1995; Wodak & Meyer, 2009).

An important aspect to keep in mind when employing critical discourse analysis and systemic functional linguistics is that a text is rarely the work of one person. Discursive differences are negotiated in texts, and are governed by power differences (Fairclough, 1995). Written texts are often sites of struggle, which demonstrate elements of differing discourses and ideologies contending and struggling for dominance. As has been shown, many stakeholders with various interests and differing power relations were involved in the process of drafting and eventually passing the RTE Act, and a number of concessions were made (Srivastava & Noronha, 2014).

### **3.4 Method**

The method draws from some tenets of grounded theory, where qualitative data are evaluated to discern patterns or construct categories. This is to make an analytical generalization and to create a deeper understanding of the case (Stake, 1983; 2013; Yin, 1994; 2008; 2013). The method for analysis was a content analysis of the rules, incorporating critical discourse analysis and systemic functional linguistics. The precise procedure is described below.

First, documents were analyzed to determine which rules existed regarding the FSP compulsions and the Model RTE rules, in order to evaluate the initial level of compliance by the selected states. Model RTE Rules were drafted by the Central Government to serve as a guideline for states to construct their own rules, amend existing rules to comply with the RTE Act, or to adopt as is. Comparing state rules to the Model Rules was used as a preliminary check of whether the former contained the content related to the regulatory areas of interest (Section 3.4.1 below). Initial comparisons were drawn regarding the level of detail and specificities between state-level rules related to each area.

The second level of analysis involved a deeper examination of the rules to investigate their actual construction and formulation. The aim was to tease out underlying meanings and to generate a

better understanding of the issues related to access and inclusion. This involved coding the qualitative data (legal texts), firstly by using a manual coding process, and then by using the qualitative data analysis software, Leximancer.

Manual coding was conducted as an initial coding technique in order to identify and label broad categories. These were marked as tags representing significant ideas or concepts to be further examined. Systemic functional linguistics and critical discourse analysis were applied to determine and select words/lexicon related to the concepts of access and inclusion, in order to develop these tags during the initial coding phase. Leximancer was used in the second stage to code the legal texts with the tags developed by critical discourse analysis and systemic functional linguistics as parameters. The output generated by the software was used to study the themes and patterns extracted. These were later used to create a better understanding of the legal framework surrounding the 25 percent FSP in Delhi and Karnataka in order to answer the research questions.

#### 3.4.1 Criteria for Content Analysis

In order to create a mapping of the overall regulatory environment in each state, the research design consists of a content analysis of the collective set of rules that were prescribed by both states regarding the 25 percent FSP. Content analysis focused on examining specific regulatory areas deemed relevant to examining the implementation of the FSP and regarding private schooling generally (Table 4 below). These were based on the analytical strategy of the larger research project, and were chosen to support and align with areas of examination therein.

**Table 4: Criteria and Rationale for Content Analysis**

|                                                             | Criteria                                                             | Rationale                                                                                                                                                                                                                           |
|-------------------------------------------------------------|----------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>Definition of Eligibility and Required Documentation</i> | Definition EWS and disadvantaged group                               | Determines families eligible to secure admission under this provision.                                                                                                                                                              |
|                                                             | List of necessary documents for each category of applicants          | Provides necessary information for parents seeking to apply.                                                                                                                                                                        |
|                                                             | Neighbourhood criteria                                               | Determines eligibility or preference among applicants.                                                                                                                                                                              |
|                                                             | Authority responsible for information dissemination                  | Addresses awareness levels about the provision and places the onus on schools or the government to fill reserved seats.                                                                                                             |
| <i>Admission</i>                                            | Selection process                                                    | Explains completion of the selection process in the event that places are oversubscribed, and allows for planning among schools and parents for the admission cycle, while also ensuring greater accountability among stakeholders. |
| <i>Free Entitlements</i>                                    | Supplies and special support                                         | Determines the extent to which access and inclusion to private schools is “fee free”.                                                                                                                                               |
| <i>Reimbursement</i>                                        | Process and calculations for reimbursement                           | Procedures ensure that assessment of per-child expenditure is not <i>ad hoc</i> and help schools prepare for the necessary steps for reimbursement. Ensures government accountability to follow-through with financial commitment.  |
| <i>Grievance Mechanism</i>                                  | Appointment of local authority and process for submitting complaints | Ensures states fulfill responsibility of designating local authority, while central law outlines process of grievance redressal.                                                                                                    |

Source: Based on broader Right to Education and Non-state Actors project strategy and internal documents.

Definitions of EWS and disadvantaged groups, and the articulation of discrimination are important because they have an impact on who is eligible for admission under the 25 percent FSP. Definitions that are not detailed, specific, and clear can act as barriers for historically excluded groups as they attempt to access free seats. Additionally, if multiple identities are not considered in the definitions of EWS disadvantaged groups and articulations of discrimination this can be another challenge in accessing free seats.

Local context and demographics could play an important role in determining who specifically is eligible for the free seats, and thus, who will be ‘included’. For example, in Delhi, migration is a common phenomenon, as seasonal or migrant workers come to Delhi in search of work. This means that the children of new migrants are likely to be out of school. In Karnataka, there are reportedly large numbers of child workers, which contributes to keeping children out of school (UNDP, 2014). Therefore, state-specific contexts could impact the potential opportunities for inclusion if statements/lexicon to acknowledge children from affected groups and their circumstances are not captured in the free seat definitions or criteria for eligibility.

The entitlements that are conferred to children who access free seats are imperative because they have a bearing on whether, and the extent to which, access is actually “free”. Tuition is only one aspect of cost. Other costs (e.g., textbooks, uniforms, school lunches, fees beyond tuition) often make attending school (and private school) unaffordable for poorer groups. Thus, entitlements

granted under the 25 percent FSP can contribute significantly to reducing barriers of entry, and will affect our analysis of accessibility.

An effective grievance redressal mechanism is critical to ensuring that local authorities take the RTE Act seriously, as it is the only enforcement mechanism which is built into the Act. Additionally, a grievance redressal mechanism is a platform from which parents can exercise and claim the rights articulated under the 25 percent FSP rules. The presence and clear articulation of a grievance redressal mechanism can also have an impact on the extent to which private schooling is made accessible. The grievance process can provide a source of agency and allow EWS and disadvantaged groups to challenge unruly practices.

Reimbursement procedures are analyzed because they are a major incentive for compliance by private schools (Jha & Parvati, 2010; Jain & Dholakia, 2009; Sarin & Gupta, 2013; Tucker & Saghal, 2012). Clear and timely reimbursement procedures can serve to demonstrate that the government is taking steps to working as a partner with private schools and support the implementation of the provision. This is important because the success of the 25 percent FSP is dependent on the cooperation of private schools. Demonstrating a willingness and commitment to reimburse schools can serve to increase cooperation.

### **3.5 Data Sources**

The main data sources were official publicly available government orders, notifications, circulars, education acts, and rules for Delhi and Karnataka, and also those issued by the Central Government. Reports and further documents from state departments of education, right to education websites, DISE, and MHRD were also used as supplementary documentation. These were checked against the larger project's documentary database.

The documents collected were used to map the regulatory framework in the case study states to gauge progress over time and make comparisons. Legal texts and state-level rules, notifications, and orders were analyzed for lexicon, and to ascertain the underlying implications of the wording for opportunities of increased equity and inclusion. Some newspaper articles and reports were used to provide insight where there were information gaps, or where certain information was not available on official government websites. However, these were not analyzed as data. Rather, they were used to provide background information and context.

### **3.6 Ethics Statement**

This study was based on documentary analysis of publicly available documents through official sources, including government websites. Documents were also drawn from the larger project's database, which compiled publicly available documents gathered by the larger research team. In accordance with the University of Ottawa's Office of Research Ethics and Integrity, further ethics clearance for this study was not required.

## CHAPTER 4: CASE STUDY STATE PROFILES

### 4.1 General Background Statistics

Table 5 provides a summary of case study state profiles, and comparisons with national figures.

These data will be discussed further in the sections below.

**Table 5: Profiles of Case Study States Compared to All-India Data**

| DEMOGRAPHIC BREAKDOWN     |                     |      |                       |      |                           |      |                               |      |                          |      |                            |      |
|---------------------------|---------------------|------|-----------------------|------|---------------------------|------|-------------------------------|------|--------------------------|------|----------------------------|------|
|                           | Total Population    |      | SC (%)                |      | ST (%)                    |      | OBC(%)                        |      | Muslim (%)               |      | Child 0-6 yrs. (%)         |      |
| Karnataka                 | 63 million          |      | 17.1                  |      | 7.0                       |      | N/A                           |      | 14.38                    |      | 11.2                       |      |
| Delhi                     | 16.7 million        |      | 16.8                  |      | 0                         |      | N/A                           |      | 16.27                    |      | 11.8                       |      |
| India                     | 1.25 billion        |      | 16.6                  |      | 8.6                       |      | 41*                           |      | 14.88                    |      | 13.1                       |      |
| RURAL VS. URBAN BREAKDOWN |                     |      |                       |      |                           |      |                               |      |                          |      |                            |      |
|                           | Population (%)      |      | Male Population (%)   |      | Female Population (%)     |      | Child Population 0-6 yrs. (%) |      | Sex Ratio                |      | Average Literacy Rates (%) |      |
| Karnataka                 | Rural               | 61.3 | Rural                 | 50.5 | Rural                     | 49.5 | Rural                         | 12.1 | Rural                    | 979  | Rural                      | 63.8 |
|                           | Urban               | 38.6 | Urban                 | 50.9 | Urban                     | 49.1 | Urban                         | 11.2 | Urban                    | 963  | Urban                      | 85.8 |
| Delhi                     | Rural               | 2.5  | Rural                 | 54.0 | Rural                     | 45.9 | Rural                         | 13.5 | Rural                    | 0.85 | Rural                      | 81.8 |
|                           | Urban               | 97.4 | Urban                 | 59.6 | Urban                     | 46.5 | Urban                         | 11.9 | Urban                    | 0.87 | Urban                      | 86.3 |
| India                     | Rural               | 68.8 | Rural                 | 51.3 | Rural                     | 48.7 | Rural                         | 73.7 | Rural                    | 923  | Rural                      | 67.7 |
|                           | Urban               | 31.1 | Urban                 | 51.8 | Urban                     | 48.2 | Urban                         | 26.2 | Urban                    | 905  | Urban                      | 84.1 |
| GENDER BREAKDOWN          |                     |      |                       |      |                           |      |                               |      |                          |      |                            |      |
|                           | Male Population (%) |      | Female Population (%) |      | Male Child Population (%) |      | Female Child Population (%)   |      | Female Literacy Rate (%) |      | Male Literacy Rate (%)     |      |
| Karnataka                 | 50.1                |      | 49.3                  |      | 51.3                      |      | 48.7                          |      | Rural                    | 58.3 | Rural                      | 77.6 |
|                           |                     |      |                       |      |                           |      |                               |      | Urban                    | 77.9 | Urban                      | 90.0 |
| Delhi                     | 50.1                |      | 49.3                  |      | 51.3                      |      | 48.7                          |      | Rural                    | 58.3 | Rural                      | 77.6 |
|                           |                     |      |                       |      |                           |      |                               |      | Urban                    | 77.9 | Urban                      | 90.0 |
| India                     | 51.5                |      | 48.5                  |      | 52.2                      |      | 47.8                          |      | Rural                    | 57.9 | Rural                      | 77.1 |
|                           |                     |      |                       |      |                           |      |                               |      | Urban                    | 79.1 | Urban                      | 88.8 |

Source: DISE data from 2012 as reported in DISE (2014); Census of India, 2011.

## **4.2. Economic, Demographic, and Development Context**

### **4.2.1 Karnataka**

#### 4.2.1a Introduction and Economy

Karnataka is a south Indian state bordering Maharashtra, Goa, Tamil Nadu, Kerala, and Andhra Pradesh. The capital is Bangalore (Government of Karnataka, 2014). Karnataka's economy is diversified and accounts for 8% of all Indian enterprises. It employs more than 8% of India's total workforce (Planning Commission, 2011). This is a result of specific economic developments. Since the 1980s, Karnataka's economy has been moving away from the primary sector, which involves farming and agrarian activities. By 2002, the primary sector comprised 26% of the state's GDP (UNDP, 2005). Presently, Karnataka has a significant information technology sector, which contributes to the knowledge-based economy. It is a leader in developing software (Government of Karnataka, 2005). Forty percent of India's software exports now come from Karnataka (UNDP, 2005).

Diversification is a characteristic of most modern economies. However, the shrinking of the primary sector can pose a problem in Karnataka. Approximately 56% still depend on agrarian activities as their main source of livelihood (Government of Karnataka, 2014). This is quickly becoming disproportionate as compared to the share of the state GDP constituted by the primary sector, and puts the primary sector workforce in a precarious position. Many people in this demographic constitute a significant portion of the economically weak and historically excluded (UNDP, 2005).

#### 4.2.1b Population

With a population of 61 million (DISE, 2012), Karnataka is the ninth most populous state. A large segment of the population resides in rural areas (Table 5), while approximately 39% lives in areas classified as urban (DISE, 2012). There is a large urban-rural differential between education levels, as measured by literacy rates. This is a significant observation considering that a vast majority of the population currently resides in rural areas. Interestingly, rural areas in Karnataka also have a lower percentage of schools in rural areas compared to other high performing, but also educationally backward states (DISE, 2013).

Rural areas are predominantly home to segments of the population that continue to be in the declining primary sector labour force (UNDP, 2005). Although this might indicate many economically weaker segments reside in rural areas, the proportion of poor populations is actually higher in urban areas than in rural areas (Planning Commission, 2011). These data suggest that the economically weaker segments are more geographically dispersed across the state, rather than concentrated in rural areas. However, a significant portion of historically disadvantaged (i.e., ST, SC, Muslim groups), making up almost 40 percent of the state's population, reside in rural areas and continue to be the most economically deprived (UNDP, 2014). This has serious implications for addressing the challenge of inclusion and access to education for historically disadvantaged and economically weak groups facing Karnataka.

#### 4.2.1c Human Development

Karnataka ranks twelfth among all states, with a Human Development Index (HDI) of 0.519 (UNDP, 2011), this puts it in the category of having a “medium HDI”, but falling below the national HDI score of 0.586 (Planning Commission, 2011). One quarter of Karnataka's population lives below the poverty line (UNDP, 2014), and more than half of the population belonging to the historically disadvantaged and vulnerable SC, ST, and OBC groups, lives below the poverty line. Further, according to the *Karnataka Human Development Report* (2005), SC, ST, and OBC groups are about a decade behind the rest of the state population in terms of progress towards human development, as they had been historically excluded or bypassed by the development process.

Another issue of concern is the prevalence of child labour in Karnataka, which has approximately a 14% child work participation rate (UNDP, 2014). This is higher than all of its neighbouring states. This, along with the poverty concerns outlined above, can serve as a major barrier for opportunities of inclusion and access for the poorest and most vulnerable children in the state. These are challenges that must be adequately recognized and addressed within the 25% FSP rules.

#### 4.2.2 Delhi

##### 4.2.2a Introduction and Economy

Delhi, officially known as the National Capital Territory (NCT) of Delhi, is the capital territory of India (Government of Delhi, 2014). Delhi was made into a Union Territory in 1956, with New Delhi as its capital. It is one of the largest metropolises in the country, and also the largest commercial centre in Northern India (Government of Delhi, 2014), being the hub of trade, commerce, and industrial activities. Delhi's economy is among the fastest growing in India, with a reported economic growth rate of 9.3% in 2013 (UNDP, 2012). It is also the most prosperous among all states and union territories (UNDP, 2013). The economy is largely dominated by the service sector. Approximately 78% of its total GDP derives from the service industry (Government of Delhi, 2014). Delhi's key industries include banking, real estate, financial services and tourism (Government of Delhi, 2014). Manufacturing also plays a significant role, constituting almost 20% of the total GDP (Government of National Capital Territory of Delhi, 2006).

##### 4.2.2b Population

Delhi has a total population of about 16.7 million. It has the highest population density among all the states and union territories with 11,000 people/km<sup>2</sup> (Census Organization of India, 2012), compared to the national average at 382/km<sup>2</sup> (Census Organization of India, 2012). Table 5 contrasts urban and rural population statistics. Up to 97% of Delhi's population resides in urban areas (Census Organization of India, 2012). Only 3% lives in areas classified as rural (DISE, 2012). Census data from 2011 indicate that the rural population has been recording a negative growth rate (Census Organization of India, 2012).

Perhaps surprisingly, the sex ratio in Delhi is only 0.868, which is substantially below the national average of 0.940 (Census Organization of India, 2012). The female literacy rate is also lower than male literacy rate, with a 75% literacy rate for females compared to 91% for males (86.3% in Delhi overall) (DISE, 2012). Population data from Table 5 above denote that there is a gender gap in both absolute numbers of the population, as well as literacy rates. There are urban-rural differentials for females, which are negligible for males.

It can be argued, that while their absolute numbers may be low, girls living in rural areas of Delhi are among the most vulnerable and excluded in the NCT. Thus, it is necessary to examine how/whether the RTE Act specifically extends reach to them. Other vulnerable groups, including children from SC and Muslim populations, constitute about one-third of the total population, a significant proportion. Given these data, it will be relevant to examine whether Delhi formulates its 25 percent FSP rules in a manner that adequately acknowledges the various challenges faced by its vulnerable populations in order to benefit these groups.

#### 4.2.2c Human Development

Delhi has an HDI value of 0.75. It ranks second highest in the country, and well above the national HDI value, which is 0.586 (UNDP, 2011). Possible explanations may be its predominantly urban nature, and the fact that it did not historically have a large agrarian sector. Instead, Delhi has seen large investments over decades, as the political and commercial hub of the country (UNDP, 2013). This has allowed for quicker progress towards the high value service and industrial sectors, which now dominate Delhi's economy.

### **4.3 Education Contexts**

#### 4.3.1 Karnataka

##### 4.3.1a Education Interventions

Although Karnataka has only a medium-level HDI value, it is one of the top-performing states regarding education. It ranks fifth out of 35 states on the EDI, and performs especially well on its outcome indicator, which ranks fourth out of the 35 states. Access and teacher indicators also perform fairly well, with rankings of 8 and 9 respectively.

These high rankings may be, at least partially, attributed to the state's increased spending on education between 2000 and 2010 which increased by almost 7% during this time (Government of Karnataka, 2014). Karnataka has placed a specific emphasis on achieving UEE targets, as 62% of its education budget is allocated to primary education (Department of Public Instruction, 2014). This spending has coincided with some improvements in enrolment and retention (De et al., 2011). However, although Karnataka has several interventions aimed at dealing with issues for improved quality, inclusion, and access, analysis of government documents did not reveal how much has been spent on them.

Some notable education interventions, which Karnataka has adopted over the years to target its EWS and historically disadvantaged populations, are:

- **Free Uniform and School Bags:** Started in 1961, providing free uniforms and books to boys and girls up to the age of 14. It began as part of an incentive strategy linked to the Karnataka Primary Education Act (Government of Karnataka, 2014). The aim of this scheme is to provide incentives and to decrease economic barriers to education, as well as to retain children in school until the compulsory age.
- **Akshara Dasoha:** Midday meal scheme, established in 2001 (Department of Public Instruction, 2014). Provides daily, hot, cooked midday meals to students in Classes 1 to 10. The objectives of this scheme are to: increase enrolment, attendance, and retention; improve health; and improve overall learning ability through improved nutrition.
- **Schemes for out-of-school children:** The Government of Karnataka has established several schemes for bringing out-of-school children into the mainstream school system (Suresha & Mylarappa, 2012), including:
  - *Coolianda Shalege* and night schools aimed at child workers
  - Mobile schools for children from slums
  - *Beediyinda Shalege* for street children
  - *Baa Baale Shalege* for out-of-school girls
- **Directorate of Urdu and other Minority Language Institutions:** Established in August 1987 (Department of Public Instruction, 2014) with the mandate to identify “educationally backward” minority areas and provide educational facilities or open new schools to serve their needs (Government of Karnataka, 2014).

While literacy rates have increased and gender disparity has decreased from the 1990s to the 2000s (Suresha & Mylarappa, 2012), progress remains mixed. More than half of the ST, SC, and female populations are illiterate, and literacy in rural areas is still far behind universal elementary education targets. Thus, more action is needed to ensure that EWS and historically excluded segments of the population are adequately reached and included

#### 4.3.1b Legislative Context Preceding the RTE Act

*The Karnataka Education Act, 1983* preceded the RTE Act in Karnataka, and served as the major legislation regulating education in the state. The Karnataka Education Act has many chapters that cover several pertinent issues, such as: enforcement of primary education; recognition of

educational institutions; and admission to recognized education institutions. Table 6 summarizes chapters from the Karnataka Education Act relevant to the RTE Act, and specifically the 25 percent FSP.

**Table 6: Karnataka Legislative Framework Prior to RTE Act as Compared to the RTE Act**

| 1973 Karnataka Education Act                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Aligns with RTE Act, 2009                                                                                                                                                                                  |
|------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Chapter                                        | Provision                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                            |
| Chapter 3: Enforcement of Compulsory Education | Governments may specify that in certain areas for certain age groups that education is compulsory. Under this chapter, the state government reserves the right to make education in certain areas compulsory, but compulsory education is not fully enforced or standardized across the state (Karnataka Primary Education Act, 1983, s11).                                                                                                                                                                                                                                                                         | No. The RTE Act specifies that compulsory education is for all children 6-14 and universally applied across the country.                                                                                   |
|                                                | Stipulates that it is the prerogative of the local authorities of different districts to decide whether or not they would like to submit a detailed scheme to the state government requesting to make education compulsory in their area (Karnataka Primary Education Act, 1983, s12).                                                                                                                                                                                                                                                                                                                              | No. RTE Act definitively mandates compulsory education for every child aged six to 14.                                                                                                                     |
|                                                | Even if a district has successfully implemented a compulsory education scheme for their area, several “reasonable” excuses for non-attendance are outlined. (Karnataka Primary Education Act, 1983, s12 (a-h). These include physical or mental defects, and other compelling circumstances such as cases where there is not an approved school within prescribed neighbourhood.                                                                                                                                                                                                                                    | No. RTE mandates compulsory education. This allows for many different justifications for non-attendance. In essence, it provides a loophole for non-attendance even within a compulsory education setting. |
|                                                | Requires children should not be employed in a manner that prevents school attendance (Karnataka Primary Education Act, 1983, s18).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Yes, but from the large child worker population in the state that not enough has been done to protect children from non-attendance.                                                                        |
| Chapter 8: No Fees                             | Instructs that educational institutions should not collect fees – this means any institution imparting education, including private educational institution (Karnataka Primary Education Act, 1983, s 1(3)). No other term for ‘fees’ such as, ‘charges’ or ‘donations’, shall be used to justify collecting of fees. This is directly aligned with the nature of the RTE Act, which legislates that education shall be both compulsory and free. However, section 48 states that the ban on fee collection can be ‘subject to any other law’ which can allow for justification of certain types of fee collection. | No. RTE Act states that any type of fee collecting is banned even private schools are not permitted to collect fees under the 25 percent FSP clause.                                                       |
| Chapter 15: Rules Applying to Private Schools  | Rules of control for private schools, however, private schools classified as charitable or religious institutions are exempt (Karnataka Primary Education Act, 1983, s 102).                                                                                                                                                                                                                                                                                                                                                                                                                                        | No. RTE Act contains specifications on regulating private school admissions, and no specification on fee structures.                                                                                       |
|                                                | Outlines accounting and administration procedures for private schools to follow. All other governance aspects are left to the management of the private school (Karnataka Primary Education Act, 1983, s104).                                                                                                                                                                                                                                                                                                                                                                                                       | N/A                                                                                                                                                                                                        |

Many of the clauses align with what is articulated in the RTE Act. However, there are subtle differences in the way that the Karnataka Education Act is worded. In several instances, some of the clauses are suggestive guidelines rather than explicit regulations, such as the chapter pertaining to compulsory education. There are also several ambiguities in the previous legislation that can lead to multiple interpretations or loopholes in terms of compliance. For example, the clause related to the collection of fees in Chapter 8, allows for ‘other’ unspecified laws to nullify what is stated in the Karnataka Education Act regarding free education.

Overall, unlike the RTE Act, the Karnataka Education Act did not mandate education to be compulsory or completely free. However, the existence of the Karnataka Education Act prior to the RTE Act is encouraging because it indicates that the state had already identified, articulated, and legislated some important education issues. This could indicate that Karnataka may have some measure of regulatory readiness to implement and comply with the RTE Act, and the 25 percent FSP clause.

#### 4.3.2 Delhi

##### 4.3.2a Education Interventions

Along with being among the top-ranked state on the HDI, Delhi also ranks high on the composite EDI, placing it sixth overall. It performs especially well in terms of teacher and infrastructure indicators, ranking first and second respectively, on these indicators. Despite these favourable rankings, literacy gender gaps remain one of the main educational challenges. Furthermore, Delhi ranks much lower in terms of access (which includes the number of schools serving a neighbourhood, as well as classroom ratios), being eleventh out of 35 states and union territories.

There are multiple types of schools imparting education in Delhi, and various local bodies entrusted with managing them (Mahajan & Goyal, 2005). Although there are large numbers of private unaided schools in Delhi (DISE, 2014), there is also heterogeneity in public provision. As in the rest of the country, the vast majority of children from socially disadvantaged backgrounds and EWS groups attend government schools (Govinda, 2011). The Delhi government encouraged and supported the opening of different types of schools to serve specific purposes and/or target groups (e.g., *sarvodaya vidyalayas* and *pratibha vikas vidyalayas*). Some different government school types in Delhi include:

- *Pratibha Vikas Vidyalayas*: Typically better equipped than other government schools and aim to target talented students from disadvantaged groups who cannot afford to pay high fees. Their purpose is to foster talent and competitive spirit in order to allow talented students to reach their full potential. Admissions are based on admissions tests (Directorate of Education, 2014).
- *Sarvodaya Vidyalayas*: Aim to provide quality education as is being provided in private schools to children from Class 1 to 12 (Directorate of Education, 2014). Admissions are based on random selection by lottery (Directorate of Education, 2014).
- Municipal Corporation of Delhi (MCD) Schools: Constitute the large majority of government primary schools. Managed and administered by the MCD rather than the Delhi Directorate of Education.

The Delhi Government has also implemented several education interventions aimed at attracting students to schools and encouraging attendance and retention, including:

- Opening new schools: Between 2007 and 2012, 106 new primary schools were opened (UNDP, 2013) by the MCD and the Department of Education to meet growing demand, especially due to migration into Delhi and population growth. This strategy mainly addresses the issue of quantity, but does not provide a concrete solution for resolving issues of inclusion for the most vulnerable groups (Govinda, 2011).
- Free textbooks: For students in Class 1 to 8 in government and private-aided schools. This strategy seeks to promote enrolment by offsetting some of the economic barriers that may prevent some students, especially the EWS and “below poverty line” (BPL) populations, from enrolling and attending school.
- Uniform subsidy: For all students (pre-primary to Class 12) in government or private-aided schools to offset schooling costs (Govinda, 2011). Primary school students receive Rs. 500/year to subsidise uniform costs.
- Free Transportation: Used to address the gender gap, one of the biggest educational challenges facing the territory. Transportation is provided to some girls in rural areas if there is not an educational facility in the village or community (Mahajan & Goyal, 2005).

#### 4.3.2b *Legislative Context Preceding the RTE Act*

The *Delhi School Education Act, 1973* and the *Delhi School Education Rules, 1973* existed much before the RTE Act. The Delhi Education Act and rules constitute the legally enforceable requirements for the functioning of the Directorate of Education through regulation of areas pertaining to: establishment, management, recognition and upgrading of schools; terms and conditions of service for employees; admission to schools; and fees. The rules on the other hand, provide guidelines regarding how legal requirements pertaining to issues mentioned in the Act should be applied. Table 7 summarizes some notable parallels and discrepancies among the relevant issues.

**Table 7: Delhi Legislative Framework Prior to RTE Act Compared to the RTE Act**

| 1973 Delhi Education Act and Rules                  |                                                                                                                                                                                                                                                                                                                                                 | Aligns with RTE Act, 2009                                                                                                                                                                                                            |
|-----------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Chapter                                             | Provision                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                      |
| Chapter 2: Regulation of Education                  | Free education in Delhi for children until the age of 14. The onus for administering free education is on the Administrator, which would be the local government body in the various districts (Delhi School Education Rules, 1973, s 5(3)).                                                                                                    | Yes                                                                                                                                                                                                                                  |
|                                                     | Section 37(2), allows for secondary school students, above the age of 14, to be fined for non-attendance or absence without an application from a parent or guardian. This is in contravention to the RTE Act, which does not allow fines or fees of any kind.                                                                                  | N/A the RTE Act does not cover secondary school children.                                                                                                                                                                            |
| Chapter 12: Admissions to Recognized Schools        | Admissions tests are prohibited, but there is a caveat, schools can have this rule overturned with approval from the Director of Education (Delhi School Education Rules, 1973, s 132).                                                                                                                                                         | No. RTE Act does not allow admission tests of any sort.                                                                                                                                                                              |
| Chapter 13: Fees and Other Charges in Aided Schools | Prohibition on government or private-aided schools to charge fees for education for children under the age of 14 ((Delhi School Education Rules, 1973, s 146).                                                                                                                                                                                  | Yes                                                                                                                                                                                                                                  |
|                                                     | Section 151 provides for fees classified as development fees. These are not classified as a fee for education; rather, it is an allowable fee that is charged to students to cover costs incurred by schools who invest in improvements such as recruiting better qualified teachers or purchasing of teaching aids and audio visual equipment. | No. Under RTE Act, any fees that may prevent a child from pursuing and completing elementary education are impermissible (Section 2(2)). This includes fees that are separate from the admission fees (Section 1(b); Section 4(13)). |

Although there are similarities between the 1973 Delhi School Rules and the RTE Act, there are also caveats within the 1973 Delhi rules that make it a less rigid regulating instrument for creating more opportunities for inclusion within the existing education system. The content and wording

of the 1973 Delhi rules are directed towards schools and school management. The next chapter will present the bulk of the analysis on Karnataka's' and Delhi's adoption of the RTE Act's 25 percent FSP.

## **CHAPTER 5: ANALYSIS OF MAJOR THEMES, ISSUES AND GAPS**

### **5.1 25 FSP Percent Rules: Content Analysis**

The Model RTE Rules drafted by the Central Government serve as a guideline for states, providing specific actions to be followed towards fulfilling the provisions mandated by the RTE Act. The Model RTE Rules are meant to assist states in constructing their own rules, or amending existing rules to comply with the Central RTE Act. Section 38 of the RTE Act gives states some power and discretion to make rules or define their own procedures regarding some prescriptions, such as defining neighbourhood limits and determining a grievance redressal process. However, states can also choose to adopt the Model RTE rules rather than amending existing legislation or creating new legislation.

Rules/clauses that pertain and are relevant to the 25% FSP in the Central RTE Act are described in Table 8. Karnataka and Delhi complied with federal requirements by adopting and notifying their own version of the RTE Act Model Rules regarding the 25 percent FSP clause (see Appendix 4 for a summary of the main rules). As mentioned in Section 1.5, notification does not necessarily correspond to implementation, which is beyond the scope of this study to ascertain.

**Table 8: Model FSP Rules**

| Criteria                                                  | Provision                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|-----------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Eligibility (definitions of EWS and disadvantaged groups) | <p>Disadvantaged section: ‘a child belonging to Scheduled Caste, the Scheduled Tribe, the socially and educationally backward class or such other group having disadvantage owing to social, cultural, economical, geographical, linguistic, gender or other such factor, as may be specified by the appropriate Government, by notification’ (Right of Children to Free and Compulsory Education Act, 2009, s 2(d)).</p> <p>Economically Weaker sections: ‘child belonging to such parent or guardian whose annual income is lower than the minimum limit specified by the appropriate Government, by notification’ (Right of Children to Free and Compulsory Education Act, 2009, s 2(e)).</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| Admission Procedures                                      | Unaided schools and special category schools ‘shall admit at least 25% of the strength of the class, children belonging to weaker sections and children belonging to disadvantaged groups from the neighbourhood and provide them free and compulsory education till completion of elementary education                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| Free Entitlements                                         | A child attending a school under the 25 percent FSP shall be entitled to free text books, writing material and uniforms; a child with disabilities shall also be provided free special learning and support material (Model Rules under Right of Children to Free and Compulsory Education Act, 2009, s 5).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| Reimbursement                                             | <p>Private unaided schools shall be reimbursed expenditure incurred by it to the extent of per-child-expenditure incurred by the State, or the actual amount charged per child, whichever is less, provided that such reimbursement shall not exceed per-child expenditure incurred by a school. Further, schools which were already under obligation to provide free education to a specified number of children due to receiving land, building, equipment or other facilities, either free of cost or at a concessional rate, will not be entitled for reimbursement Right of Children to Free and Compulsory Education Act, 2009, s 12(2)).</p> <p>Schools must maintain a separate bank account in respect to the amounts received as reimbursement (Right of Children to Free and Compulsory Education Act, 2009, s 12(2)).</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| Grievance Mechanism                                       | <p>Responsibility of the State Commission for Protection of Child Rights to look into grievances, but local authorities can also do so, and are likely the first step in the process. ‘Any person having any grievance relating to the right of a child under this Act may make a written complaint to the local authority having jurisdiction. After receiving the complaint the local authority shall decide the matter within a period of three months after affording a reasonable opportunity of being heard to the parties concerned. Any person aggrieved by the decision of the local authority may prefer an appeal to the State Commission for Protection of Child Rights’ (Model Rules under Right of Children to Free and Compulsory Education Act, 2009, s 31).</p> <p>The grievance can also be lodged directly with the State Commission for Protection of Child Rights as ‘the State Commission for Protection of Child Rights shall set up a child help line, accessible by SMS, telephone and letter, which would act as the forum for aggrieved child/guardian to register complaint regarding violation of rights under the Act, in a manner that records her identity but does not disclose it’ (Model Rules under Right of Children to Free and Compulsory Education Act, 2009, s 32)</p> |

Source: Model Rules under Right of Children to Free and Compulsory Education Act, 2009

The analysis is presented in two parts. The first part establishes the rules each state has in place regarding the 25 percent FSP. In addition, a content analysis of the FSP rules is discussed by evaluating the construction and articulation of the rules in both states, and how they capture what has been articulated in the Central RTE Act rules. Critical Discourse Analysis and Systemic

functional linguistics techniques will be used to deconstruct the meaning of the words and language used to frame the rules (see Chapter 3 for more detail on methodology).

The second part compares and contrasts between the various state rules and the meanings that were revealed through the analysis above. Through this comparative analysis, themes and concepts related to social inclusion and access surrounding the approach to education in Delhi and Karnataka as framed by the 25 percent FSP clause will be discussed.

### 5.1.1 Karnataka

Karnataka's RTE rules were notified in 2012 (Government of Karnataka, 2014). The rules, as well as circulars and government orders which elaborate on these rules, constitute the following legal framework regarding the 25 percent FSP (see Table 9).

**Table 9: Karnataka 25 Percent FSP Rules**

| Criteria                                                    |                                                             | Provision                                                                                                                                                                                                                                                                                                                  | Clause Reproduced from Model Rules |
|-------------------------------------------------------------|-------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------|
| <i>Definition of Eligibility and Required Documentation</i> | Definition of Economically Weaker Section                   | ST; SC; OBC which have been specified as category I, category IIA, category IIB; orphans; migrant and street children; children with disabilities; HIV affected/infected or affected children (Karnataka Right of Children to Free and Compulsory Education Rules, 2012, s 2(e)).                                          | No                                 |
|                                                             | Definition of Disadvantaged Group                           | Castes and communities excluding the disadvantaged groups where parent/guardian's annual income < Rs. 350,000(Karnataka Right of Children to Free and Compulsory Education Rules, 2012, s 2(f)).                                                                                                                           | No                                 |
|                                                             | List of necessary documents for each category of applicants | Certificates for Orphan Child/ Migrant Child/Street Child/Disabled/Child requiring special attention/HIV affected child                                                                                                                                                                                                    | No                                 |
|                                                             | Neighbourhood criteria                                      | The neighbourhood or area limits for admission is with one kilometer of the school. The school 'may, for the purpose of filling the requisite percentage of seats extend these limits with the prior approval of the State Government' (Karnataka Right of Children to Free and Compulsory Education Rules, 2012, s 4(b)). | Yes                                |
| <i>Admission</i>                                            | Authority responsible for information dissemination         | No authority held responsible for information dissemination                                                                                                                                                                                                                                                                | No                                 |

|                          |                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |     |
|--------------------------|----------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
|                          | Selection Process                            | <p>A draw of lots where there are more applications than seats. First come, first served principle does not apply in any case (Government of Karnataka, Notification SI.No.3, 2012).</p> <p>Seat breakdown when considering admissions: Orphans, HIV affected/infected children, child with special needs, and migrant and street children 'shall be given admission under RTE at first instance'. After this, out of the 25 percent, 7.5 percent of the seats shall be provided to children belonging to SC groups and 1.5 percent of seats to children belonging to ST groups. The remaining 16 percent shall be provided to other categories of children belonging to weaker sections and disadvantaged groups (Government of Karnataka, Notification SI.No.3, s 9 &amp; s 13, 2012).</p> <p>Children belonging to weaker sections: Admission to children whose parents or guardians annual income is equal to or less than Rs. 100,000 shall be given preference'; 'children whose parents or guardians annual income is between Rs. 100,000 and 350,000 may be considered afterwards' (Government of Karnataka, Notification SI.No.3, s 12,2012).</p> | No  |
| <i>Free Entitlements</i> | School Supplies                              | Free textbooks, writing materials and uniforms (Karnataka Right of Children to Free and Compulsory Education Rules, 2012, s 5).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Yes |
|                          | Special Support                              | Despite Section 5 stipulating only three types of entitlements, Section 6 outlines that schools are responsible for ensuring that children admitted in pursuance of the 25 percent FSP, shall not be discriminated from the others in respect of entitlements such as library and ICT facilities, co-curricular programme and sports (Karnataka Right of Children to Free and Compulsory Education Rules, 2012, s 6(3)).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | No  |
| <i>Reimbursement</i>     | Authority to calculate per child expenditure | Not mentioned                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | No  |
|                          | Method of calculating reimbursement          | Reimbursement to the extent of per-child-expenditure incurred by the State, or the actual amount charged from the child, whichever is less, provided that such reimbursement shall not exceed per-child expenditure incurred by a school                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Yes |

|                            |                                          |                                                                                                                                                                                                                                                                                                                                                                                                                        |     |
|----------------------------|------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
|                            | Number of installments for reimbursement | The reimbursement shall be made directly, by way of electronic transfer in a separate bank account. Payments made in two installments, 50% shall be made in September and the second installment shall be reimbursed in the month of January after the submission of a compliance form to the Deputy Director of Public Instruction (Karnataka Right of Children to Free and Compulsory Education Rules, 2012, s 8(4)) | No  |
|                            | Approved Amount                          | Government shall notify per-child expenditure every year before the commencement of the academic year (Karnataka Right of Children to Free and Compulsory Education Rules, 2012, s 8(2)).<br><br>This amounts to a maximum of Rs. 11,848 as expenditure per child per month on elementary education for reimbursement for the 2013-2014 school year*                                                                   | No  |
|                            | Appointment of local authority           | The local authority is the Municipal Corporation, Municipal Council, Zilla Parishad, Nagar Panchayat, or Panchayat, and includes other authority having administrative control. The named Zilla Panchayat Standing Committee of Education and Health is responsible for providing free and compulsory education (Government of Karnataka, Notification Ed: 27, 2012)                                                   | No  |
| <i>Grievance Mechanism</i> | Submitting Complaints                    | Not mentioned.                                                                                                                                                                                                                                                                                                                                                                                                         | N/A |
|                            | Grievance Redressal                      | The Authority 'shall pass orders within 3 months of the written complaint filed with the authority, after affording a reasonable opportunity of being heard to the parties concerned' (Government of Karnataka, Notification Ed: 27, 2012).                                                                                                                                                                            | Yes |

Source: Karnataka Right of Children to Free and Compulsory Education Rules, 2012

\*Note: This amount is based on verifying several newspaper articles between 2013 and 2015, from: The Indian Express, The Hindu, and Hindustan Times. Due to linguistic limitations, government circulars could not be found in English.

#### 5.1.1a Definitions for Eligibility

Karnataka has definitions for EWS and disadvantaged groups in accordance with the guidelines provided in the Model Rules. In compliance with the Model Rules/Central RTE Act, Karnataka has specified a minimum annual income limit for a child to be considered as being part of EWS groups. A child belonging to a parent/guardian whose annual income is less Rs. 350,000 is eligible under the EWS criteria. Karnataka's specifications for a child to be eligible under the disadvantaged group criteria are also in accordance with the Model Rules. It has articulated specific types of disadvantaged children: migrant children, street children, children with disabilities, and HIV-affected or -infected children. These definitions capture disadvantages owing to social, cultural, and geographic, as well as economic factors.

Although the definitions capture multiple types of disadvantage, there are limits to how the eligibility provision is constructed. There is no mention of gender or religion, although both are important facets and significant bases upon which exclusion and disadvantages have been premised historically. In addition, the concepts of multiple identities or the intersection of different characteristics, such as, gender, ethnicity, religion, social class, and personal experiences, which constitute a child's overall identity, are not fully considered in the lexical formulation of these definitions.

In its definition of EWS, the rule explicitly states that disadvantaged groups are excluded from this category. This implicitly disaggregates potential multiple identities, as economic disadvantage becomes mutually exclusive from other types of disadvantage. Here bivalent collectives are not considered, as economic exclusion is delinked from identity based on cultural valuation. Therefore, a child who belongs both to the EWS and a disadvantaged group must choose which category to apply under. Groups are labeled/categorized in a “cookie cutter” manner. In some instances, the wording suggests that belonging to one group necessarily makes it impossible to belong another.

There is no mention of complex layered intersections that often contribute to identity, and hence, to exclusion. Even if the rules allow for multiple identities to be considered, in practice, the wording/vocabulary is limiting and relies on parents/children choosing a single type of disadvantaged category in order to access their right. In cases where priority is given to one category over another (see Section 5.1.1b below), a child whose identity encompasses the intersection of more than one eligible category will have to relegate their identity to only one description in order to get priority in accessing their right. This becomes extremely important in terms of admission procedures as is explained below.

#### 5.1.1b Admission Procedures

The process to obtain admission is specifically articulated in Karnataka's rules. A clear neighbourhood limit of one kilometer has been articulated, which is the suggested limit within the Central RTE Act. Furthermore, the rules allow the neighbourhood distance limit to be extended if the 25 percent quota has not been reached. If applied, this caveat ensures that schools must fill the entire 25 percent allotment, and cannot claim a lack of neighbourhood applicants as the reason for not meeting the requirement.

Applicants do not get priority based on the timing of their application, as the “first-come-first-served” principle does not apply. This randomizes the selection process, and can be seen as a form of procedural justice whereby random selection reduces bias in the selection process and increases its perceived fairness. Nonetheless, the selection process is not completely random as certain groups are given preference over others, i.e., there are specific breakdowns governing allotment among EWS and disadvantaged groups.

While considering EWS applicants, although the income limit for eligibility is Rs. 350,000 preference is first given to children whose parents’/guardians’ annual income is below Rs. 100,000. While the rules are written to give preference to those who are the most economically disadvantaged within the EWS category, the loosely described annual income could actually expand the number of individuals who can qualify under this category. This could be the case if income is only understood as official employment income and does not include any other sources of income that parents or guardians may have from other sources.

There are also specific percentages of seats meant to be allotted to children from SC and ST groups, at 7.5% and 1.5%, respectively. The larger allotment for SC seats compared to ST seats could be because of their relative proportions in Karnataka’s population. The SC population constitutes 17% compared to 7% for the ST population (DISE, 2012). The state rules, however, do not provide a rationale for the method used to develop its seat breakdown.

The remaining 16% of seats are to be divided among EWS and other disadvantaged groups. However, there is a hierarchy regarding the division of these seats. Orphans, children with special needs, HIV-affected/-infected children, migrants, and street children are to get “first instance” admission. This specification could be an attempt to target the most disadvantaged within disadvantaged groups who constitute the residual out-of-school children.

Karnataka’s specified seat breakdown raises the issue of identity once again. The formulation of these rules could clash with multiple identities or multiple forms of exclusion, especially since some groups receive priority over others for admission based on their positioning within the definitions of eligible groups. The breakdown of seats based on categories is written so that identity of a person is binary, i.e., either belonging to one category or another, but not both (for the purposes of admission). This creates a motivation for parents/guardians to confine the identity

of their child to one group for practical purposes to have the best chances to qualify for and be admitted in a free seat.

Although confining identity to one dimension is practical because it allows for ease of application, it does pose a problem in terms of addressing the underlying issue of identity, which is deeply connected to perpetuating patterns of social exclusion that have existed in India. Beyond practical purposes, this could be a means of pinpointing children who have experienced the ‘most’ disadvantage based on historical patterns of access and exclusion for various types of disadvantaged groups. For example, India’s Twelfth Five-Year Plan recognizes the need to focus special attention on certain groups who continue to remain out of school (Planning Commission, 2013), even though near universal primary school enrolment has been reached in India according to official statistics. The specific breakdown also provides transparency in the process as it offers a step-by-step process for how schools must consider applicants. The process is random but not arbitrary, which facilitates greater perception of procedural justice.

#### 5.1.1c Free Entitlements

Karnataka is specific about the types of entitlements. The construction of this provision includes the word ‘only’ (Karnataka Right of Children to Free and Compulsory Education Rules, 2012, s 5), which is a modal verb that gives meaning to the verb it precedes. Within this provision it gives meaning to the verb ‘entitled’ which denotes that there are no other possibilities, i.e., no other free entitlements will be provided beyond textbooks, writing materials, and uniforms. Although, there are no further specifications about other types of fees beyond these free entitlements and free admission, this rule conforms to the basic requirements outlined by the Model Rules.

There is no mention of special entitlements for children with disabilities, although the Model Rules specify that children with disabilities should receive special support and learning materials. By not specifically outlining entitlements to support the learning of children with disabilities, there is a gap between the Model Rules/Central RTE Act and Karnataka’s provision. This is an omission that has a potentially important impact on creating equitable opportunities for access for certain types of disadvantaged children. It limits the extent to which education is fee-free, as schooling costs extend beyond tuition fees. Often, costs associated with learning materials act as barriers to equitable access and inclusion.

Furthermore, there is a discrepancy between Section 5 in Karnataka's rules, specifying free entitlements (i.e., only uniforms, textbooks, and writing materials) for disadvantaged children, and Section 6, which outlines the responsibilities of schools regarding admission of children belonging to weaker segments and disadvantaged groups. Section 6 specifies that children shall not be discriminated from entitlements including library/ICT material as well as co-curricular programmes and sports. However, these are not specifically stated as free entitlements in Section 5. This can lead to confusion as to which rule applies, and the extent to which private schools must provide different free entitlements. Lack of clarity can create loopholes, which may prevent children in pursuance of the 25 percent FSP to access fee-free education in practice.

#### 5.1.1d Reimbursement

Karnataka's reimbursement rules come directly from the Central RTE Act. The state rules expand on details of the timeframe for reimbursement (payment in two installments) beyond what the Central Rules specify. Further, the Government must declare the per-child expenditure for the year prior to the start of the academic year.

These details and applying the first installment of reimbursement in September of the school year could serve to create some more clarity for private schools to plan, and also to build goodwill between private schools and the government. Issuing payments in two installments can also address delays in receiving reimbursement which has been cited as a major deterrent for private schools in adopting the 25 percent FSP (Gupta, 2014; Malhotra et al., 2014). Furthermore, a clear and timely reimbursement mechanism can contribute to the successful implementation of the 25 percent RTE and reduce the possibility for schools to indulge in unruly practices (Malhotra et al., 2014).

#### 5.1.1e Grievance Mechanism

In accordance with the Model Rules and Central RTE Act, Karnataka has designated a grievance redressal authority, the District Level Education Regulating Authority. In addition, the State Commission for Protection of Child Rights also acts as an appellate and independent authority that is able to receive complaints and pass judgments (Karnataka Right of Children to Free and Compulsory Education Rules, 2012). This highlights the issue of lack of clarity, as having multiple grievance authorities without clearly specifying the roles and levels of authority for each

can create confusion in terms of the authority that individuals should contact when filing a complaint.

This creates a labyrinth of authoritative bodies that individuals must navigate in order to exercise their right to contest the 25 percent FSP process if need be, and can cause confusion. It also raises the question of transparency, as there is no clearly defined authority to deal with specific issues (e.g., admission), which may be different from others (e.g., infrastructure or teacher responsibilities). The struggle for parents to determine which authority would best handle their complaint can act as a deterrent in filing complaints. Additionally, having more than one grievance authority requires a deliberate effort towards collaboration and streamlining the process to ensure that complaints are handled in a timely manner. Given the potential for a large volume of complaints, collaboration becomes even more pertinent, as having large numbers of unresolved complaints weakens the usefulness of the grievance redressal system as an effective enforcement mechanism.

Furthermore, although a three-month time limit has been demarcated by which the authority must provide a response and pass an order, there is no provision for dealing with issues that may require expediency, such as those related to the timely admission of a child under the 25 percent FSP. In addition, the grievance redressal procedure only provides for complaints to be received in writing. There is no mention of alternatives in the case that the complainant cannot submit a written grievance, for example, for parents who are illiterate. This poses challenges for the efficacy of the grievance mechanism as an enforcement mechanism for all. While the rules have taken the initial steps required to establish a framework for a grievance redressal mechanism, there are vagaries and gaps in the process, undermining its robustness to ensure enforceability of the rules.

### **5.1.2 Delhi**

Delhi has a larger share of private unaided schools to total schools compared to Karnataka (DISE, 2012). The manner in which these schools are regulated and made accountable will have an important impact on Delhi's education system as they play an integral role in imparting education. In addition, Delhi was the first state to notify RTE rules, which it did in 2011 (Government of National Capital Territory of Delhi, 2014). As the political centre and the first state to notify its rules, it will be interesting to note how they are formulated and how they

compare to the central RTE Act's 25 percent FSP in terms of capturing the intent of increased inclusion. The rules guiding the 25 percent FSP in Delhi are summarized in Table 10.

**Table 10: Delhi 25 Percent FSP Rules**

| Criteria                                                    |                                                             | Provision                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Clause Reproduced from Model Rules |
|-------------------------------------------------------------|-------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------|
| <i>Definition of Eligibility and Required Documentation</i> | Definition of Economically Weaker Section                   | EWS are identified as children whose parents have total annual income of less than Rs. 100,000 from all sources (Delhi School Education Free seats for students belonging to Economically Weaker Sections and Disadvantaged Group Order, 2011, S 2(c)). Previous requirement of minimum residency revoked (State of the Nation: RTE Section 12(1)(c) Report, 2015)                                                                                                                                                       | No                                 |
|                                                             | Definition of Disadvantaged Group                           | Disadvantaged groups 'mean a child belonging to the Scheduled castes, Schedule tribes, Other Backward classes not falling in the creamy layer, child with special needs'. This also includes orphans; migrants and street children; HIV affected/infected children (Delhi School Education Free seats for students belonging to Economically Weaker Sections and Disadvantaged Group Order, 2011, S 2(d)).                                                                                                               | No                                 |
|                                                             | List of necessary documents for each category of applicants | Proof of residence is required for admission. For weaker segments an income certificate issued by a revenue officer or BPL ration card is required; if neither is available parents can submit a self-declared annual income affidavit each year. For disadvantaged groups a certificate issued by a revenue officer in the name of the child or his/her parents is required (Delhi School Education Free seats for students belonging to Economically Weaker Sections and Disadvantaged Group Order, 2011, 6 4(a) (b)). | No                                 |
|                                                             | Neighbourhood criteria                                      | First priority given to students residing within 1 km of specific school. If seats remain unfilled, children from 3 km may be considered then limits of neighborhood may be extended to 6 km (Delhi Right of Children to Free and Compulsory Education Rules, 2011, s 6(1)).                                                                                                                                                                                                                                             | No                                 |
| <i>Admission</i>                                            | Authority responsible for information dissemination         | It is the responsibility of the school to display information pertaining to the FSP including the total number of seats, the number of free seats available at entry level, and all deadline information (Delhi School Education Free seats for students belonging to Economically Weaker Sections and Disadvantaged Group Order, 2011, s 4(a)).<br><br>A District Admission Monitoring Committee (DAMC) shall be established in each district,                                                                          | No                                 |

|                          |                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |     |
|--------------------------|------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
|                          |                                                                              | which will establish a Help-Desk to help parents/guardians regarding admissions under the FSP; the Help-Desk shall be functional until the admission process is closed (Delhi School Education Free seats for students belonging to Economically Weaker Sections and Disadvantaged Group Order, 2011, 7 (a)).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |     |
|                          | Description of admission form format or sample copy attached to notification | Application form uploaded on the website (www.edudel. nic.in) and attached to notification. Schools must give a receipt when receiving an application with registration number for student (State of the Nation: RTE Section 12(1)(c) Report, 2015)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | No  |
|                          | Selection Process                                                            | In the case that the number of applications exceeds the number of FSP seats 'admission shall be made by draw of lots in the presence of the parents of the applicants and of a nominee of the Education Department, not below the rank of Vice Principal'. Further, the procedure of drawing of lots shall be video graphed and the CD/DVD shall be submitted to the Deputy Director of Education (Delhi School Education Free seats for students belonging to Economically Weaker Sections and Disadvantaged Group Order, 2011, s 4 (d)(e)).<br><br>Screening procedures for the purpose of admission under the FSP are prohibited. 'No interview, counselling, written or oral test of any type shall be conducted, otherwise, the school shall be penalized' (Delhi School Education Free seats for students belonging to Economically Weaker Sections and Disadvantaged Group Order, 2011, S 5(a)). | No  |
| <i>Free Entitlements</i> | School Supplies                                                              | Free textbooks, writing material and uniform (Delhi Right of Children to Free and Compulsory Education Rules, 2011, s 10(2)).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Yes |
|                          | Special Support                                                              | A child with disabilities shall be provided with free special learning and support material (Delhi Right of Children to Free and Compulsory Education Rules, 2011, s 10(2)).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Yes |
| <i>Reimbursement</i>     | Authority to calculate per child expenditure                                 | No committee or individual was assigned the responsibility to assess the per child expenditure                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | No  |
|                          | Method of calculating reimbursement                                          | Reimbursement to the extent of per-child-expenditure incurred by the State, or the actual amount charged from the child, whichever is less, provided that such reimbursement shall not exceed per-child expenditure incurred by a school                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Yes |
|                          | Number of installments for reimbursement                                     | No number of installments for the reimbursement given.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | No  |

|                            |                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |    |
|----------------------------|--------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
|                            | Approved Amount                | <p>The Department of NCT Delhi has approved an amount of up to Rs.1290 as expenditure per child per month on elementary education for reimbursement for the 2013-14 and 2014-15 school years; this is revised from the 2011-12 amount of Rs. 1190 (Government of National Capital Territory Delhi, Circular No. F. DE. 18-11, 2014).</p> <p>No reimbursement shall be given to schools 'which have been allotted land by Govt. [government] at concessional rate[s] to the extent schools are under obligation to admit students from weaker sections as per terms and conditions of the lease/land allotment letter' (Government of National Capital Territory Delhi, Circular No.F.DE. 18-11, 2012, s 2).</p> | No |
|                            | Appointment of local authority | <p>District Deputy Directors of Education from the Directorate of Education have been designated to perform the duties of Local Authority in terms of grievances (Guidelines for Redressal of Grievances, 2014).</p> <p>Aggrieved parents may file complaints in writing to the DAMC (Guidelines for Redressal of Grievances, 2014).</p> <p>'The Delhi Commission for Protection of Child Rights may set up a child helpline to register complaints regarding violation of rights of the child under the Act, which may be monitored by it through a transparent on-line mechanism' (Delhi Right of Children to Free and Compulsory Education Rules, 2011, s 24)</p>                                            | No |
| <i>Grievance Mechanism</i> | Submitting Complaints          | 'Complaints can be written or made in person by any person on behalf of the child'. Complaints can be sent by post, fax, email, or in person in an enclosed format (Guidelines for Redressal of Grievances, 2014).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | No |
|                            | Grievance Redressal            | Any registered grievance should be decided by the committee within three months of its filing. However, in the case of grievances which relate to matters of urgency such as admissions (including FSP admission) the Deputy Director 'shall endeavour to decide the matter within 15 days from the date of receipt' (Guidelines for Redressal of Grievances, 2014).                                                                                                                                                                                                                                                                                                                                            | No |

Source: Delhi Right of Children to Free and Compulsory Education Rules, 2011

\*Note: The creamy layer refers to those in the OBC category who have reached a predefined income ceiling. In 2008, this was set at Rs. 450,000. This also includes children of individuals who hold specific occupations including: officers of India Central/State services; Supreme Court justices and any other constitutional posts; and professional classes, for example, doctors and engineers (National Commission for Backward Classes, 2015).

### 5.1.2a Definitions for Eligibility

Like Karnataka, Delhi has definitions for EWS and disadvantaged groups in accordance with the guidelines provided in the Model Rules. Also on compliance with the Model Rules/ RTE Act, Delhi has specified a minimum annual income limit for a child to be considered as being part of an EWS group. A child whose parent/guardian's annual income is less than Rs. 100,000 from all sources is eligible under the EWS criteria. The specification of income less than Rs. 100,000 could disqualify people who are on the cusp of the limit, but in terms of real living standards in Delhi may not be “non-poor” (Noronha & Srivastava, 2013).

Delhi's specifications for a child eligible under the disadvantaged group criteria are also in accordance with the Model Rules. Specific types of disadvantaged children are defined, including SC, ST, and OBC, as well as orphans, migrants, street children, and HIV-affected/-infected children. It is worth noting that there is no clause explicitly excluding disadvantaged groups from EWS criteria.

This could suggest that individuals who could fall into either of the two groups have the option of applying as either EWS or disadvantaged, depending on how they perceive their disadvantage (i.e., owing more to economic or social status), or according to how they would like to navigate the ‘rules of the game’. The main implication here is in regards to providing documents of proof. Therefore, the choice could be based on the type of proof (income or identification) that is more easily obtained, which could direct how parents navigate the admissions process, rather than on how strongly associated they feel with any group.

An interesting caveat within the distinction of eligible groups is individuals in the OBC category that fall in the “creamy layer”, i.e., earning above a pre-defined threshold or holding certain posts/occupations (see Table 10 and note to Table 10 above). This group is excluded from the definition of disadvantaged groups. While this is may be limiting because it may exclude historically discriminated groups on the basis of their economic status without considering other forms of exclusion they may face despite their economic circumstances, it aims to prevent people who are relatively better-off regarding their social status or with government connections to potentially take undue advantage of the free seats provision. Thus, it seems that the Central RTE Act and the Model Rules make a distinction between EWS and disadvantaged groups in order to specifically target exclusion owing to different forms or bases of discrimination. Delhi, however,

has made financial vulnerability a major source of qualification for free seats within its jurisdiction.

Delhi's eligibility rules are formulated to be specific. The articulation avoids problems of ambiguity, but rules are written in a way that makes them restrictive. Multiple criteria have been outlined and must be met. This can limit eligibility to exclude a proportion of the population by disqualifying groups who fall short of certain criteria. This essentially limits access to the right of 25 FSP opportunities to groups who may not be 'poor enough' or 'disadvantaged enough', but may, nonetheless, face disadvantages owing to several factors.

#### 5.1.2b Admission Procedures

Delhi has a detailed admission procedure, which provides clear instructions on how the process should be carried out. This includes requirements of having witnesses present, as well as visual evidence of the random drawing of lots procedure to be videotaped and submitted to the Deputy Director of Education to be kept in the records. This contributes to procedural justice, as steps are taken to ensure transparency and integrity within the process. Furthermore, the roles of various stakeholders in the admission process are clearly outlined. It is the responsibility and onus of the schools to provide information pertaining to available free seats to their neighborhood constituents. The DAMC plays the role of supporting or assisting parents in the process of applying for admission.

Delhi has also outlined, in detail, accepted forms of proof required for admission. This includes proof of residence, income, and proof of belonging to a disadvantaged category. Although lack of documentation is not a sufficient reason to deny admission, it can act as a hurdle, which makes the process cumbersome and delayed. Additionally, obtaining documents of proof may be costly, and may be a deterrent for some. Furthermore, if it is not clearly communicated to parents and private schools that lack of documentation is not a sufficient basis for schools to refuse admission, then unruly practices could arise during the admission process if private schools insist on receiving documentation before moving forward with admission.

#### 5.1.2c Free Entitlements/Reimbursement

Delhi's rules pertaining to free entitlements and reimbursement for children accessing private schools under the 25 percent FSP are taken directly from the Model Rules. A circular released in March 2014 provided a revised amount from Rs.1190 per month in 2011-2012 to Rs.1290 per child per month to be reimbursed for the 2013-14 and 2014-15 school years. Although this circular does not mention the date when schools will be reimbursed, a previous circular released in January 2012 specified a reimbursement date of March 31, 2012. Given that the revised 2014 circular states that all other conditions to reimbursement other than the amount shall remain unchanged, it could be assumed that March 31 would continue to be the date for reimbursement per school year. In light of these details, it could be perceived that the Delhi government has taken initial steps to demonstrate some transparency in its reimbursement process, which could be an attempt to reassure private schools that may be uncertain about receiving reimbursement to cover their costs.

However, having dates for reimbursement put into writing does not guarantee what will happen in practice. This may still serve to encourage private schools regarding the intake of children in free seats as they have more clarity about the reimbursement process and they know when to expect financial compensation. It can also allow for private schools to plan and budget for the coming school year, given their new responsibility towards EWS and disadvantaged groups. This is especially important in terms of assuring private schools that may be concerned about the financial burdens/challenges that the 25 percent FSP may create for their institutions and for their fee-paying clients. However, a main concern for private schools is that the allotted per child reimbursement may not be enough to cover actual costs that private schools incur. This may cause resistance, as schools are not keen to admit students under the 25 percent FSP if they believe that reimbursement is insufficient (Malhotra et al. 2014).

#### 5.1.2d Grievance Mechanism

Delhi has several authorities (i.e., the District Deputy Directors of Education, DAMC, Delhi Commission for Protection of Child Rights) to which aggrieved individuals can lodge a complaint. Complaints can be submitted in multiple formats. This provision accommodates for parents who are illiterate, and provides multiple sources that individuals can access in order to file

a complaint. In addition, the rules are flexible in terms of timing for the authority to decide on a grievance.

The decision should be made within three months. However, there is a caveat that addresses the possibility of urgent issues such as admission, in which case the committee “shall endeavor” to reach a decision within 15 days. If followed, this can ensure that the grievance mechanism is a robust formal institution and enforcement mechanism to be used by individuals seeking admission under the 25 percent FSP, although it does not guarantee compliance in the system. Finally, although grievance redressal provisions provide several avenues for submitting complaints, which appear to indicate that Delhi is making an effort to set up a regulatory framework to govern the enactment of RTE provisions, there are drawbacks to having multiple authorities. Lack of streamlining in the process can allow for confusion and for parents to be ‘passed along’ between the various grievance authority bodies, especially if there is no coordination between them. It may be better to have one step-by-step procedure to facilitate simplicity and efficiency within the process.

## **5.2 Comparison and Contrast of Highlighted Themes and Issues**

The preceding section focused on performing a content analysis to answer the first question guiding this study, that is, to analyze state-specific rules and examine how they contribute to a legal framework that endeavours to reflect the Central RTE Act. Through a comparison and examination of the major themes extracted from the content of both Karnataka and Delhi rules, this section attempts to comment and examine on the second question of the study: *What is the potential of the rules for increasing opportunities of access and inclusion to private schooling for children from EWS and disadvantaged groups?* The analysis will focus on the underlying meanings captured in the content to analyze what they imply for potential opportunities for inclusion and access.

The content analysis demonstrates that the regulatory frameworks of Karnataka and Delhi regarding the 25 percent FSP encompasses and include all aspects of interest outlined in the framework for content analysis employed in this study (see Section 3.4.1). In particular, the analysis was interested in: the definition of EWS and disadvantaged group; admission procedures; entitlements; reimbursement procedures; and the grievance redressal mechanism. While there are some minor differences between the two states, both follow the guidelines prescribed by the Central RTE Act provisions and the Model Rules. However, there are nuances and caveats

between Karnataka and Delhi regarding content, as well as lexical formulation, word choice, and syntax. The implications of these differences as well as some of the parallels between the two states are discussed below. This is followed by a discussion on major themes and underlying patterns of conceptualization/meanings.

### 5.2.1 Differences, Parallels and Underlying Patterns

One main area of difference is the use of auxiliary verbs between the two sets of rules. An auxiliary verb helps to form the tenses, moods, and voices of other verbs (Oxford English Dictionary, 2010). There is a further set of auxiliary verbs known as modal verbs, which combine with other verbs to express possibility, necessity, intention, or ability; thus includes verbs such as *will*, *shall*, *may*, *might*, *should*, and *can* (Oxford English Dictionary, 2010). In terms of standards and regulations, the choice of a modal auxiliary verb in a sentence affects the intensity of a requirement.

Modal auxiliary verbs connote how rigid the provisions within the rules are, i.e., whether they are suggestive or mandatory. For example the word ‘shall’, when used as an auxiliary verb denotes a requirement that is mandatory whenever the criterion for conformance with the specification requires that there be no deviation (Oxford English Dictionary, 2010). This implies an obligation. On the other hand, ‘should’, denotes a guideline or recommendation. This implies a suggestion where noncompliance with the specification is permissible (Oxford English Dictionary, 2010).

The varying use of these verbs has implications on how provisions used to construct the overall rules could be interpreted by private schools, i.e., whether schools view certain provisions as obligations or requirements. The choice of verbs, therefore, changes how provisions are applied as formal institutions. They are only truly enforceable if framed as a requirement rather than a suggestion. Examples include the following: Karnataka *may* extend neighborhood limits to fill requisite seats (Karnataka Right of Children to Free and Compulsory Education Rules, 2012, s 4(b)); Delhi *shall* extend neighbourhood limits (Delhi Right of Children to Free and Compulsory Education Rules, 2011, s 6(1)). This demonstrates that the expansion of limits can be interpreted as an option for Karnataka but an obligation in Delhi. This is relevant because expanding neighbourhood limits in circumstances where all seats have not been filled ensures that schools have 25 percent of their seats filled by EWS or disadvantaged groups. Allowing the limit to be an

option provides a loophole for schools to leave some FSP seats unfilled on the grounds of insufficient applicants.

In Karnataka, ‘shall’ is used in the rule to denote the time requirements of the authority (the authority ‘shall pass orders within 3 months of the written complaint...’) in providing a decision (Government of Karnataka, Notification Ed: 27, 2012); whereas, ‘should’ is used in Delhi to denote the same requirement (any registered grievance should be decided by the committee within 3 months...) (Guidelines for Redressal of Grievances, 2014). This represents a distinct difference, implying that Karnataka’s grievance redressal authority has more rigid requirements. However, Delhi adds an additional stipulation in circumstances where expediency is important the authority is required to submit a decision in a shorter timeframe, denoted by the words ‘shall endeavor’ to decide the matter faster.

Another difference between Karnataka and Delhi involves the admission process and how seats are allotted among various categories of EWS and disadvantaged groups. Karnataka has a specific breakdown of seats, and an allotment is based on step-by-step priority sequencing of various groups. On the other hand, Delhi treats all eligible applicants from both EWS and disadvantaged groups uniformly, and selection is based only on a random selection draw of lots. So if seats are viewed as scarce resources, based on the fact that there is limited supply but greater potential demand, this discrepancy has implications for accessibility to seats among competing groups. It is further supported that seats are framed as scarce resources within the rules through the use and presence of words and phrases such as ‘available’, ‘quota’, and ‘in the case that the number of applicants exceeds the allotted seats’. This conceptualization of the seats denotes that an imbalance of supply and demand is clearly recognized, forecasted, and planned for. Therefore, competition becomes a salient factor in the admission-seeking process.

In Delhi, there is competition between all eligible groups within the disadvantaged and EWS categories, i.e., ‘inter-category’ competition. In Karnataka, in addition to inter-category competition, there is also competition within a single eligible group, or ‘intra-category’ competition. For example, HIV-infected/-affected, migrant, and street children are given first priority over children from SC and ST groups within the disadvantaged group category. Different types of competition, i.e., intra-category in Karnataka, and inter-category in Delhi, change the implication of having a draw.

A draw implies that all applicants have equal chance for selection, but when categories are divided and certain categories are given priority over others in terms of the order of consideration for admission, it changes the probabilities of being successful depending on the size and number of applicants in the category. This has implications for how children are positioned by their parents/guardians based on identity and income in order to increase their likelihood of obtaining a free seat. When multiple identities are considered, this becomes significant and may be employed as a strategy for those seeking admission through a free seat to position themselves as the most disadvantaged (based on specific facets of an integrated identity and the quota breakdowns), and therefore, most deserving.

Despite the differences in the selection processes, procedural justice can be seen in both admission procedures through a random selection process (drawing of lots) and clear instructions about how seats are divided. Both states have processes which involve competition based on identity. But there are challenges in both states for individuals seeking admission via the 25 percent FSP based on the manner in which the rules are written.

Karnataka's approach when identifying individuals who belong to eligible admission categories is very specific towards emphasizing one-dimensional sources of identity (perhaps for clarity and ease of application). For example, the definitions put forth for EWS and disadvantaged groups does not take into account multiple layers or intersecting identities. Instead, rigid categories are demarcated and to qualify children must fall into only one of those categories. This is problematic when discussing effective remedies to social exclusion, as it is often the result of multiple forms of discriminations due to the complexity of a child's positioning in society as well as their multi-faceted identity. No two children, even those within the same category, have lived the same experiences or faced the exact same form of discrimination. However, the rules are silent in terms of multiple identities, limiting their potential to be a robust regulatory framework for increasing inclusion.

In Delhi, statements of conditionality may create hurdles. Rigid requirements, which similar to Karnataka, do not recognize or articulate multiple forms of discrimination arising from multi-faceted identities can limit the potential that rules have for creating opportunities of increased access and inclusion for large numbers of historically excluded children. On the other hand, these specific definitions and multiple conditions can also be taken as a way to sift through the masses, and identify the most vulnerable children owing to extreme economic or social disadvantages.

The grievance redressal processes for both states have similar procedures for filing complaints. Each state has notified a grievance redressal authority body as required by the Central RTE Act, and outlined the format in which complaints can be received. The only major deviation between the procedures between Karnataka and Delhi is that Delhi explicitly articulates accommodations for those who are unable to submit a written complaint, whereas Karnataka is silent on this. This is a shortcoming that weakens the accessibility of Karnataka's process.

Another shortcoming for both grievance processes is the subject of anonymity. Karnataka and Delhi are silent regarding a method for complaints to be furnished anonymously or discreetly. This is important because parents/individuals who fear retaliation or negative consequences from schools or teachers may be reluctant to submit a grievance. This reduces the potential for the grievance redressal mechanism to protect EWS and disadvantaged groups in their pursuance of increased opportunities under the 25 percent FSP.

A final noteworthy lacuna in the Karnataka and Delhi rules pertains to the reimbursement process. There is no provision articulating a timely review of the amount reimbursed to schools per child admitted in a free seat. The impact of inflation should also be considered in the per-child cost calculations, which may improve reimbursement processes (Malhotra et al, 2013). Reviewing the reimbursement amount at regular intervals is key as uncertainty about reimbursement amounts and a failure to reimburse schools are main points of resistance and reluctance for many private schools to institute the provision.

## **5.4 Main Themes**

Main themes and recurring patterns were extracted as a result of performing CDA of the rules and using SFL techniques (see Section 3.4.2 for specifics). Leximancer was incorporated to visually represent the main themes emerging from each document through concept mapping based on manually coded inputs (see Appendix 5 for concept maps). The emerging and recurring patterns within the data were classified into a few main concepts, which will be further discussed in detail below:

1. The shift in the positioning of private schools within the existing framework

2. The articulation of various types of rights involved in the process of using the rules to increase opportunities for certain groups to gain access and inclusion to the private education sector.
3. The complexity of identity and its relationship with eligibility criteria articulated by the rules

Furthermore, the major emergent themes found as a result of the analysis of the rules include: the education policy approach as it relates to the rules and the role they play in positioning private schools in India's education system; and social exclusion and its interplay with the notion of identity and the potential efficacy of enforcement mechanisms. Each of these concepts and themes will be considered in order to provide a discussion on the potential and/or limitations of the rules to increase opportunities of access and inclusion to private education for EWS and disadvantaged groups.

### 5.3.1 Positioning of Private Schools

Schools are integral in the admission process under the 25 percent FSP. Although the government provides the rules and the framework for implementation, the rules dictate that schools will be responsible for carrying out the process. The rules outline that schools are responsible for providing information, receiving applications, and performing the draw to select children to fill free seats. This new responsibility represents a shift in the role that private schools should ideally play in educating India's historically excluded and marginalized children, as earlier, private schools, particularly those accessed by middle-class and elite groups, did not cater to this group. Thus, private schools can be conceptualized as traditional sites of struggle for dominance or for preserving power (Fraser, 1998; Kabeer, 2000). However, ideally under the RTE Act, the 25 percent FSP and its interpretation in Karnataka and Delhi seeks to make private schools places for inclusion for children who were previously outside the realm of access to such institutions.

Without an enforced and system of checks and balances to regulate and monitor them, private schools often acted as sites of power and dominance for the elite and affluent. The 25 percent FSP is a formal institution, which in an ideal articulation, attempts to deconstruct the exclusivity and stratification within schooling. If properly enforced, it compels private schools to allow for diversity and heterogeneity of student composition. Although this does not necessarily mean that schools will be more inclusive (having rules in place does not ensure compliance), it is a first step at improving opportunities for historically excluded children to having a better chance to access and inclusion to private schools.

There are other rules attempting to ensure that inclusion is enacted in a manner that allows for EWS and disadvantaged children, not only to have access to private schools, but also to experience inclusion within the classroom. For example, Part 2, Section 5 of the Model RTE Rules forbids segregation of students in any aspect of daily school activities such as, lunch shifts, seating, and participation in activities. Section 6(3) of the Karnataka state RTE rules and Section 10(2) of the Delhi state RTE rules are reproduced directly from the Model Rules. However, if private schools do not fully comply with the outlined rules inclusion cannot be achieved.

### 5.3.2 Articulation of Rights

The rules related to the FSP articulate certain rights, which may increase opportunities for historically excluded groups to access private schools. These rules include: the right to information regarding the 25 percent FSP application and admission processes; the right to free entitlements upon being granted admission; the right of EWS and disadvantaged groups to be included and integrated into the classroom; and the right to appeal any step of the process through a grievance redressal mechanism. Furthermore, capability deprivation, in the form of poverty or social status, is meant to be removed as a barrier for opportunities to participate in private schooling.

Together, the articulation of associated rights with the right to education and removal of capability deprivations, create an underlying context that illustrates the overall type(s) of policy approach that seems to have informed the etymological construction, syntax and writing of the rules. The 25 percent FSP rules reflect an affirmative approach as they are aiming to correct long-established patterns of discrimination and exclusion.

### 5.3.3 Identity and Eligibility

Eligibility is the first step towards actually gaining access to a free seat. In practical terms it should be the only part of the process that is not random. It requires a certain amount of screening to ensure that applicants meet the basic requirements articulated by the rules for eligibility, which are described in the definition and construction of identity for the terms EWS or disadvantaged groups. In this context identity becomes crucial, as it is the basis for applying the rules and

process to increase a child's opportunity to be included in private schooling. If children and their parents/guardians are unable to demonstrate that they meet the requirements to qualify as eligible applicants then their application is rejected.

Identification for eligibility in Karnataka's and Delhi's rules, and in the Central RTE Act and the Model Rules, is based on income or possessing certain characteristics that position the child as vulnerable and historically discriminated. Therefore, eligibility is directly tied to a child's identity. However, there are many issues surrounding the conceptualization, construction, and discussion of identity within the rules. The way in which identity is described and constructed is simplistic in terms of defining which children 'belong' within each category, i.e., EWS and disadvantaged groups. This could be an attempt at ensuring clarity and proper interpretation by private schools which must clearly understand the rules in order to appropriately apply them. However, it must be recognized that even in an attempt to simplify the rules in order to maximize their interpretation and application, there are shortcomings, as they are almost completely silent regarding the issue of multiple identities.

The rules fail to articulate and demonstrate an understanding of how multiple interests connected to complex and multi-layered identities contribute to children's everyday realities, including how they experience and may continue to experience social exclusion. Although it may not be necessary to articulate multiple identities for the rules to increase opportunities for access and inclusion, it does limit their ability to truly address the major underlying issues contributing to social exclusion. This limits the value of the rules as they fail to incorporate an integrative and holistic approach regarding the traits, factors and experiences that interact to position a child as excluded (Kabeer, 2000; Sayed et al, 2003). These traits, factors, and experiences are important to take into consideration as they can help policy makers to understand *how* or *why* (the mechanisms of exclusion) some children continue to experience exclusion, and what can be done to mitigate these challenges (Klasen, 1998).

Multiple mechanisms of exclusion, both economic and cultural (owing to identity in this context), are addressed by the rules through the articulation of EWS and disadvantaged groups. Strategies to mitigate this include financial redistribution through the FSP seats, and recognition of discrimination based on identity. However, this recognition is limited as it categorizes children in terms of basic one-dimensional characteristics.

Even if information regarding how a child obtained admission to the private school is not disclosed to the child's classmates, the process of gaining admission requires proving identity and this is something that a child can become acutely aware of. When a 'cookie-cutter' approach is used to categorize identities for the practical purpose of being able to easily apply a rule, then children are labelled in certain ways that enable one characteristic to dominate their identity. This may be damaging to their own self-perception and how others at school perceive them – both of which can impact how inclusion and access are experienced.

Another concern is that although the conceptualization of identity is simplistic, the process for demonstrating eligibility is not simple. It requires meeting multiple conditions, competing within categories, and providing proof of identity before admission can be granted. In Delhi, there are multiple conditions involved with being eligible under the EWS and OBC categories. All sources of income are considered under the EWS category. Furthermore, eligibility criteria for the OBC category exclude the creamy layer. This highlights that perhaps Delhi's rules are aimed at targeting the poorest within its society, and could allude to a conceptualization that, in the case of Delhi, caste may not be the most appropriate indicator of deprivation. Instead, the state rules view economic status as the major hurdle that perpetuates educational and social exclusion.

Alternatively, bivalent collectives could be taken into consideration whereby economic exclusion is seen as being bound by cultural valuation (including caste or class that an individual belongs to). Additionally, income is easier to quantify and measure compared to other social characteristics. This might be another reason why Delhi highlights income thresholds for eligibility.

Karnataka, on the other hand, opts to specify priority to certain groups based on income as well as social characteristics. This means that even if a child meets eligibility requirements, there is a ranking that provides a priority sequence for selecting students with the randomized draw system. This demonstrates, that like Delhi, Karnataka recognizes that there are levels of disadvantage, and it seeks to target the *most* disadvantaged within disadvantaged groups. The priority guidelines show that in Karnataka, certain identity characteristics or experiences (i.e., orphans or HIV-infected/-affected) constituting a part of a child's identity positions them as more disadvantaged.

These specific eligibility conditions in Delhi and Karnataka could ensure that opportunities for access and inclusion are granted to the most economically and socially disadvantaged children, but they can also create a cumbersome and lengthy process for validating and classifying identity.

However, there are some merits to the process. It creates specific instructions for schools, theoretically reducing the possibility for unruly practices that can emerge in instances when meanings have to be inferred. Furthermore, the process requires schools to carry out due diligence to prevent abuse of the system, which should increase the legitimacy and transparency of the process.

#### **5.4 Notable Lacunae in State-level Rules**

The state-level FSP rules, although largely compliant with the central RTE Act, have some notable lacunae. These could affect how they are interpreted, and ultimately, the role they play in improving chances for EWS and disadvantaged children to access private schooling. First, neither state clearly addresses the possibility of parents' income increasing after a child is admitted on the basis of EWS criteria. Both states rules regarding income provide for an income certificate to be presented *at the time of admission*. Schools are responsible for annually updating and maintaining records for all children who are admitted under the 25 percent FSP. However, there is not much clarity on whether change in income after admission could result in a child being denied admission for the following year. This is an important omission, especially if private schools are reluctant to admit students who they do not perceive as meeting the eligibility criteria.

There is also a gap in the rules concerning the grievance redressal mechanism. This is of critical importance because it is the main enforcement mechanism for the FSP rules. In Karnataka and Delhi, a local authority and the State Commission for Protection of Child Rights (SCPCR) have been outlined as the authority for handling grievances. However, there could be concerns over the enforceability of the decisions of the SCPCR or any other local authority, since these are not judicial bodies.

Under the Commission for Protection of Child Rights Act, the SCPCR may recommend to the concerned government mechanisms for grievance redressal as it sees fit, but these are only suggestions. It is not clearly articulated that the judgements are legally binding. Therefore, it weakens the grievance redressal system as a mechanism to enforce the rules. Additionally, although there are time specifications for local bodies to reach decisions there is no time limit specified for the SCPCR to reach a decision. This could allow for delays in correcting unruly practices in instances where rules have not been appropriately applied or complied with.



## CHAPTER 6: CONCLUSIONS

The purpose of examining and analyzing the 25 percent FSP was to understand the extent to which rules pertaining to this provision are formulated/constructed in a way that could increase opportunities for access and inclusion to private schooling for children from EWS families or disadvantaged groups. For the vast majority of children from these backgrounds, accessing private schools was previously unattainable.

The analysis has been guided by two main questions:

- (1) What rules regarding the 25 percent FSP have been put in place at the state level?
- (2) What is the potential of these rules to increase opportunities of access and inclusion to private schools for EWS and disadvantaged groups?

The analysis of the legal frameworks in Delhi and Karnataka shows that both states have taken steps to notify the 25 percent FSP rules, and that they broadly comply with the RTE Act's requirements and the Model RTE Rules regarding this provision. Each state has rules in place, which explain and enact the provisions outlined in the criteria for analysis in this study, i.e., definitions for EWS and disadvantaged groups; admission procedures; free entitlements; grievance redressal mechanism; and reimbursement procedures.

However, the level of detail and the specifics vary. Delhi's rules are written in a manner that places conditions on eligibility requirements. Further, the selection procedures in Delhi are very detailed, requiring strict record-keeping each year. Karnataka's rules provide detailed explanations of the eligibility definitions, as well as specific seat breakdowns among various eligible groups. However, the selection process does not provide step-by-step instructions for how eligible students are selected in a randomized process. Both states lack clarity in terms of the reimbursement process. Furthermore, rules regarding the grievance redressal mechanism in Delhi and Karnataka are written in a manner that is confusing. They identify several authorities without explicitly stating their precise roles, weakening the redressal process as the 25 percent FSP's enforcement mechanism.

Beyond such nuances, the lexicon and construction of the rules reveal limitations regarding their potential for increasing opportunities of access and inclusion to private schools for children from EWS and disadvantaged groups. The inconsistent use of modal verbs creates questions about enforceability, i.e., while some rules use 'shall' or 'must', others use 'should' or 'may'. These

differences allow for certain provisions to be interpreted as suggestions, and others, as requirements.

Inconsistencies within the lexicon can allow for unruly practices to arise, whereby there is a gap between what is stated by the rules in theory, and how those rules are actually implemented in practice (Kabeer, 2000). This is particularly disconcerting given that some literature (Jain & Dholakia, 2009; Jha & Parvati, 2010; Sarangapani et al, 2014; Sarin & Gupta 2013; Tucker & Saghal, 2012) suggests that many private schools are resistant to implementing the 25 percent FSP in its entirety, or at all. If there is resistance and hesitance on the part of certain private schools to implement the 25 percent FSP rules, avoiding ambiguities is critical. This serves to ensure that the rules are written in a manner that assure those who are tasked with interpreting and complying with the rules – private schools and local authorities, understand that rules are requirements not suggestions. Therefore, the choice of lexicon, and in particular the choice of modal verbs, should reflect these requirements in order to consciously prevent unruly practices. This would strengthen state-level rules, which is critical given that the RTE Act is a law, the implementation rules should reflect the compulsion of compliance.

An important underlying meaning revealed in the analysis is that state-level rules simplify identity. In an attempt to solve problems of disparities in access and inclusion the rules offer a simplistic solution to a complicated and long-standing problem. Where in the past, many children were excluded (either intentionally or unintentionally) based on factors linked to their identity, the 25 percent FSP rules are meant (ideally) to mitigate the situation, and to create opportunities based on the same identities that previously positioned children outside the realm of private schooling. However, the institutional framework pinpoints specific facets of identity rather than acknowledging the multiple characteristics that can allow for some children to be included, while others are excluded.

The RTE Act's FSP clause provides a framework for states to follow when adopting their own rules. While the rules, for the most part, comply with this framework, they do not go beyond what is provided for in the Act. They do not provide further nuance and follow the minimum provisions as outlined in the RTE Act. They do not articulate solutions taking into account the deep-rooted issues of identity and exclusion.

Therefore, although the 25 percent FSP rules create concrete rules that can, in theory, be (easily) applied, they only solve one part of the problem by creating opportunities that allow for more children to be moved from positions of exclusion to inclusion. The rules are not written in a manner that can change the underlying issues of multiple layers of identity, patterns of exclusion linked to *both* social and economic factors, and perceptions that disadvantages can be easily categorized and fixed. These have created conditions, which may cause, perpetuate, or allow exclusion. That being said, if the main aim of the FSP rules is to create more opportunities for EWS and disadvantaged children to access private schools, they outline a legal framework that can improve opportunities for previously excluded children.

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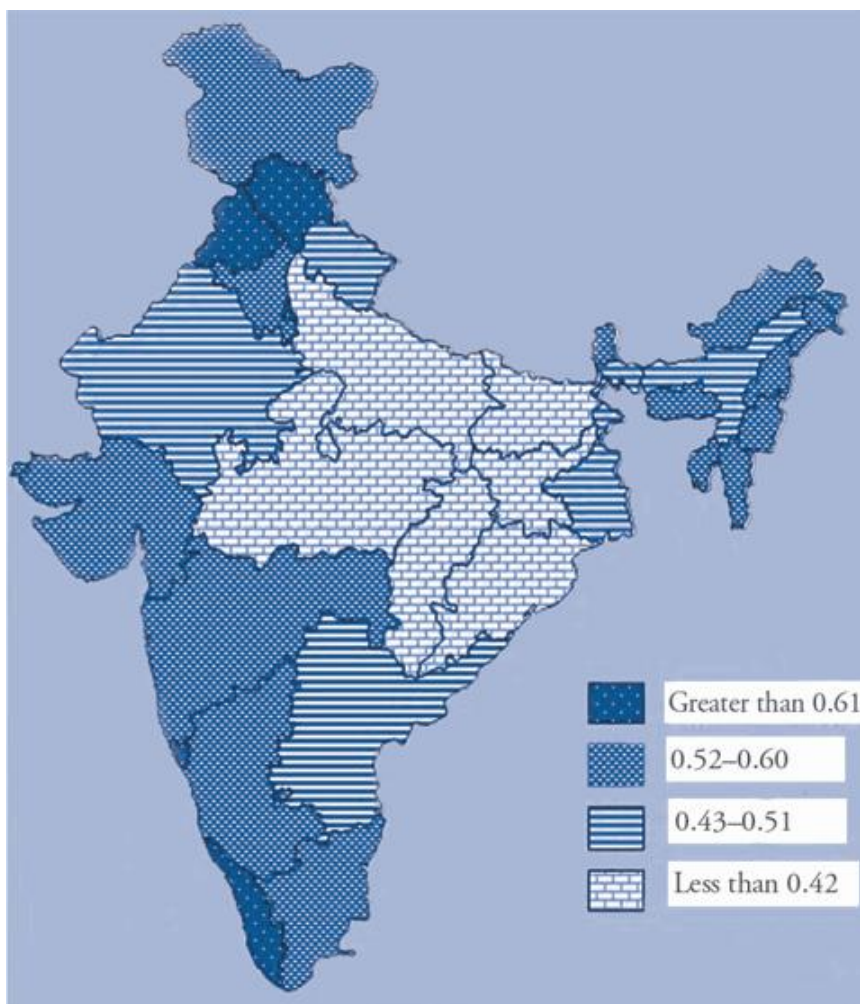
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## APPENDIX 1: INDICATORS USED IN COMPUTING EDI

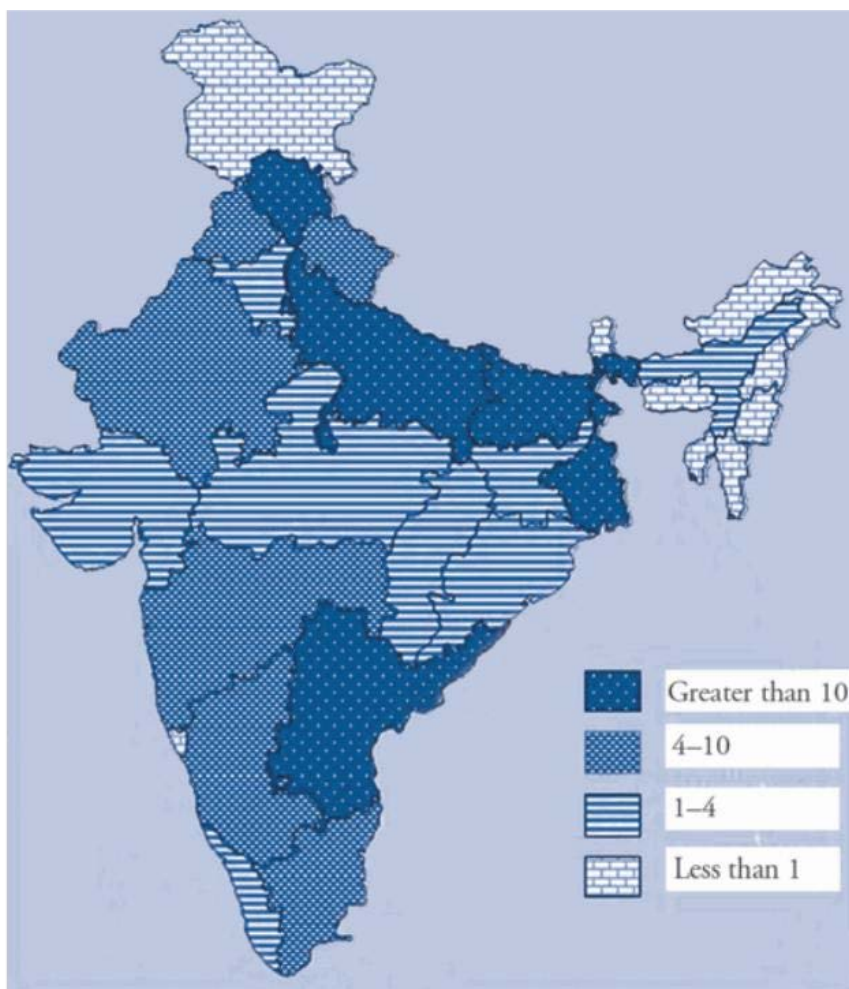
| Component      | Indicator                                                                        |
|----------------|----------------------------------------------------------------------------------|
| ACCESS         | Percentage of Habitations not Served                                             |
|                | Number of Schools per 1000 Child Population                                      |
|                | Ratio of Primary to Upper Primary Schools/Sections (only at Upper Primary stage) |
|                | Average Student-Classroom Ratio                                                  |
|                | Schools with SCR > 60                                                            |
| INFRASTRUCTURE | Percentage of Schools without Drinking Water Facility                            |
|                | Percentage of Schools with Common Toilets                                        |
|                | Percentage of Schools with Girls' Toilets                                        |
|                | Percentage of Female Teachers                                                    |
|                | Pupil-Teacher Ratio                                                              |
|                | Percentage of Schools with Pupil-Teacher Ratio > 60                              |
| TEACHERS       | Percentage of Single-Teacher Schools where the Number of Students >15            |
|                | Percentage of Schools < 3 Teachers                                               |
|                | Percentage of Teachers without Professional Qualifications                       |
|                | Overall Gross Enrolment Ratio                                                    |
|                | Gross Enrolment Ratio - Scheduled Castes                                         |
|                | Gross Enrolment Ratio - Scheduled Tribes                                         |
| OUTCOME        | Gender Parity Index in Enrolment                                                 |
|                | Repetition Rate                                                                  |
|                | Dropout Rate                                                                     |
|                | Ratio of Exit Class over Class I Enrolment (only at Primary stage)               |
|                | Percentage of Appeared Children Passed                                           |
|                | Percentage of Appeared Children Passed with > 60 percent and more Marks          |

## APPENDIX 2: MAP OF HDI ACROSS INDIA



Source: UNDP India HDI, 2011

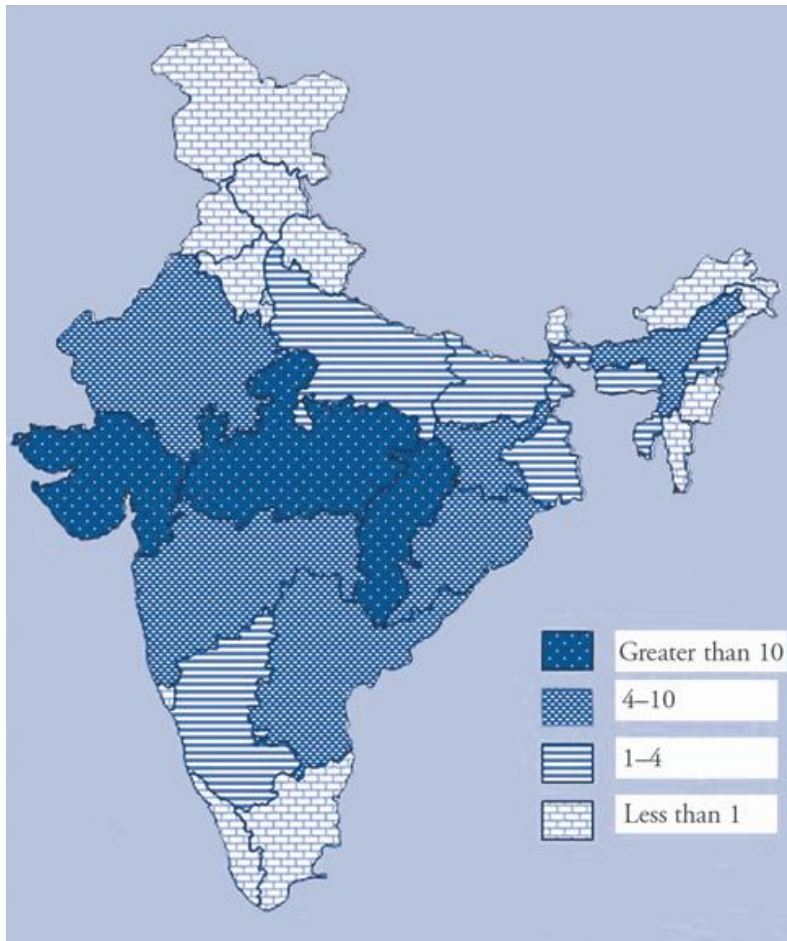
### APPENDIX 3: MAP OF VULNERABLE GROUPS DEMOGRAPHICS



Source: UNDP India HDI, 2011

Karnataka – 4-10

Delhi – 4-10



Source: UNDP India HDI, 2011

Karnataka – 1-4  
Delhi – less than 1

## APPENDIX 4: SUMMARY OF FSP RULES

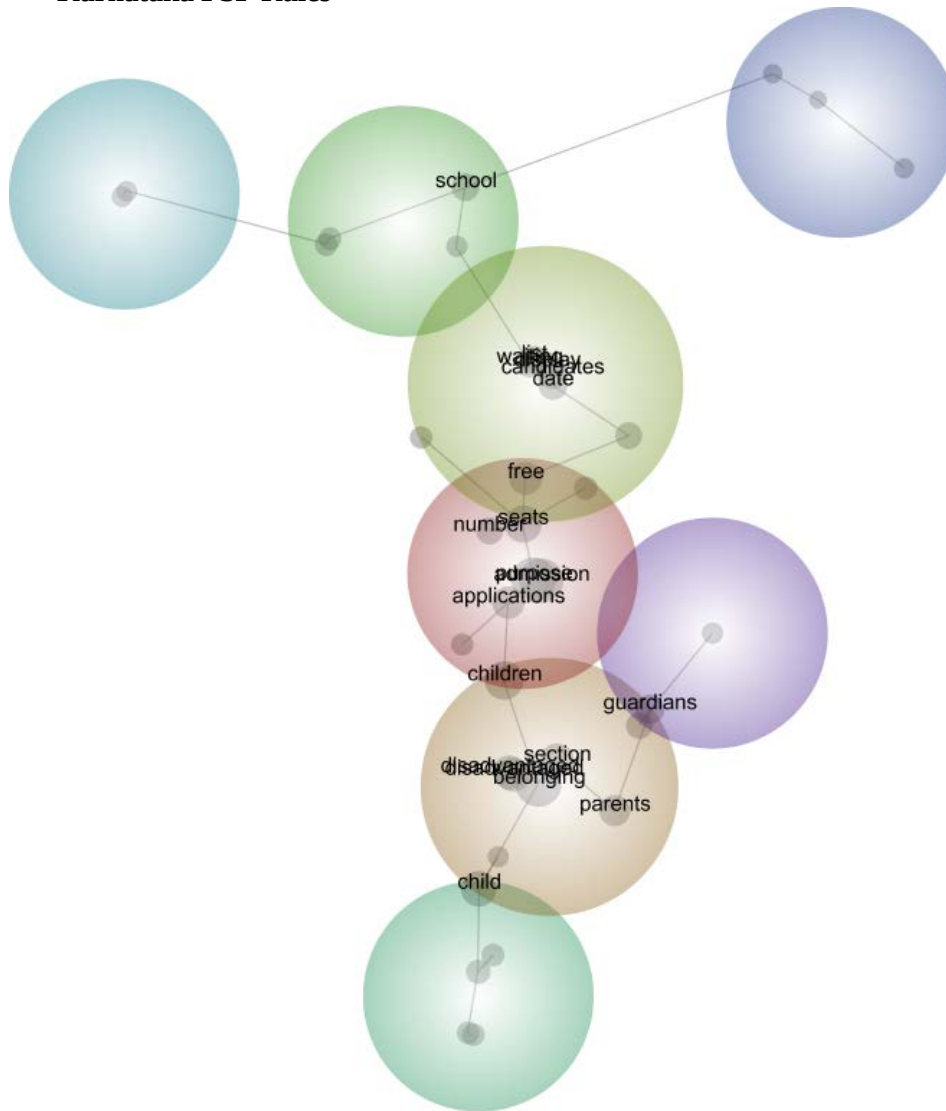
|    | EWS Criterion                                                                                                                                        | Disadvantaged Group Criterion                                                                                                                                                                                                                                                                                                                                       | Specific Articulation regarding Admissions/Selection                                                                                                                                                                                                                                                                                               | Free Entitlement                                                                                                  | Reimbursement                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Grievance Mechanism                                                                                                                                                             |
|----|------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|    | Child belonging to a parent or guardian whose annual income is lower than the minimum limit specified by the appropriate Government, by notification | <ul style="list-style-type: none"> <li>a. Scheduled Caste</li> <li>b. Scheduled Tribe</li> <li>c. Socially and educationally backward class</li> <li>d. Other group having disadvantage owing to social, cultural, economical, geographical, linguistic, gender or other such factor, as may be specified by the appropriate Government, by notification</li> </ul> | <p>No stipulated breakdown or distribution of seats beyond the 25% requirement to:</p> <p>Admit at least 25% of the strength of the class, children belonging to weaker sections and children belonging to disadvantaged groups from the neighbourhood and provide them free and compulsory education till completion of elementary education.</p> | <ul style="list-style-type: none"> <li>a) Textbooks</li> <li>b) Writing materials</li> <li>c) Uniforms</li> </ul> | Reimbursement is based on expenditure incurred by it to the extent of per-child-expenditure incurred by the State, or the actual amount charged per child, whichever is less, provided that such reimbursement shall not exceed per-child expenditure incurred by a school.                                                                                                                                                                                                      | State Commission for Protection of Child Rights or local authorities.                                                                                                           |
| Ka | Other castes and communities excluding the Disadvantaged Group where parent/guardian's annual income < Rs.3.5 lakh                                   | <ul style="list-style-type: none"> <li>a. SC (category I)</li> <li>b. ST (category IIA)</li> <li>c. OBC (category IIB)</li> <li>d. Orphans</li> <li>e. Migrants</li> <li>f. Street Children</li> <li>g. Children with disabilities</li> <li>h. HIV infected/affected children</li> </ul>                                                                            | <p>Break of Seats for Admission:</p> <ul style="list-style-type: none"> <li>1) SC: 7.5%</li> <li>2) ST: 1.5%</li> <li>3) Other categories of children and EWS: 16%</li> </ul> <p>Admission procedure through a draw of lots</p>                                                                                                                    | <ul style="list-style-type: none"> <li>a) Textbooks</li> <li>b) Writing materials</li> <li>c) Uniforms</li> </ul> | <p>Reimbursement to the extent of per-child-expenditure incurred by the State, or the actual amount charged from the child, whichever is less.</p> <p>Karnataka has approved an amount of up to 11,848 rupees as expenditure per child per month on elementary education for reimbursement for the 2013-2014 school year</p> <p>Payments are made in two installments, 50% shall be made in September and the second installment shall be reimbursed in the month of January</p> | District Level Education Regulating authority designated as the grievance redressal authority at district level                                                                 |
|    | Parents whose annual income < Rs.1 lakh and who are residents of Delhi since the last three years                                                    | <ul style="list-style-type: none"> <li>a. SC</li> <li>b. ST</li> <li>c. OBC</li> <li>d. Orphans</li> <li>e. Migrants</li> <li>f. Street Children</li> <li>g. Children with disabilities</li> <li>h. HIV infected/affected children</li> </ul>                                                                                                                       | <p>No seat breakdown</p> <p>Admission procedure through a draw of lots</p>                                                                                                                                                                                                                                                                         | <ul style="list-style-type: none"> <li>a) Textbooks</li> <li>b) Writing materials</li> <li>c) Uniforms</li> </ul> | <p>Reimbursement to the extent of per-child-expenditure incurred by the State, or the actual amount charged from the child, whichever is less, provided that such reimbursement shall not exceed per-child expenditure incurred by a school.</p> <p>Delhi has approved an amount of up to 1290 rupees as expenditure per child per month on elementary education for reimbursement for the</p>                                                                                   | <p>District Deputy Directors are the designated authorities for receiving complaints</p> <p>A three-member committee for each district decides the outcome of the grievance</p> |

|  |  |  |  |  |                                                                                                            |  |
|--|--|--|--|--|------------------------------------------------------------------------------------------------------------|--|
|  |  |  |  |  | 2013-14 and 2014-15 school years. This is an increase from the previously approved 1190 rupees set in 2011 |  |
|--|--|--|--|--|------------------------------------------------------------------------------------------------------------|--|

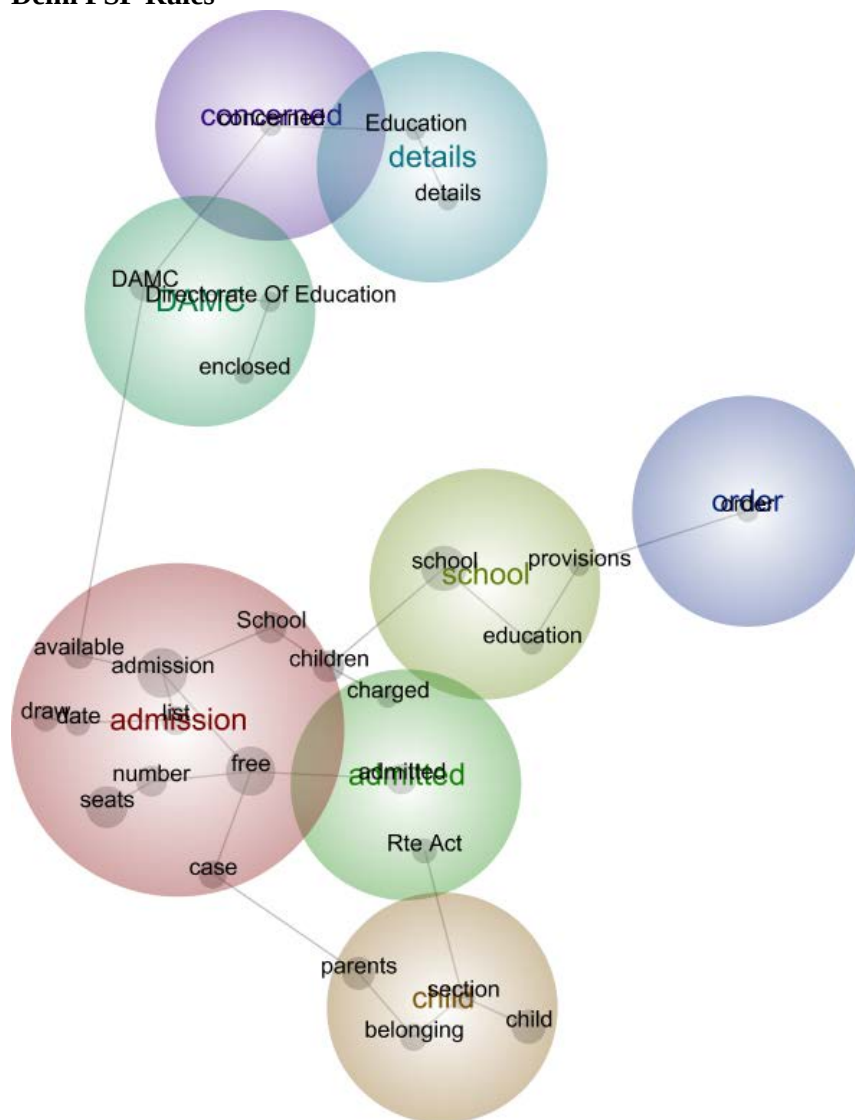
## APPENDIX 5: CONCEPT MAPS

Concept maps have been produced by the qualitative text analytics software, Leximancer. The outputs below represent concepts and themes, which have been tagged and identified within the various documents analyzed in this study. The bubbles represent relevant concepts and the words within show the corresponding themes. The lines represent how each is linked within the text and allows for a visual representation of the analysis output, allowing for ease of interpretation.

### Karnataka FSP Rules



## Delhi FSP Rules



## Comparison: Karnataka and Delhi FSP Rules

