

REPORT OF THE REVIEW COMMITTEE
ON THE DELHI SCHOOL EDUCATION
ACT AND RULES, 1973

Preamble
&
Section wise Examination of Issues

VOLUME - I

Under the aegis of
DIRECTORATE OF EDUCATION Government
of National Capital Territory of Delhi JANUARY 2012

REPORT OF THE REVIEW COMMITTEE ON THE DELHI SCHOOL EDUCATION ACT AND RULES, 1973

VOLUME - I Part - I

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Under the aegis of
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Acronyms and Abbreviations

AGCR:	Accountant General Central Revenues
CCE:	Continuous and Comprehensive Evaluation
CEP:	Computer Education Project
CIC:	Central Information Commission
CIC:	Cambridge International Centre
CB:	Cantonment Board
CBSE:	Central Board of Secondary Education
DoE:	Directorate of Education
DCB:	Delhi Cantonment Board
DCS:	Delhi Co-operative Society
DCPCR:	Delhi Commission for Protection of Child Rights
DDA:	Delhi Development Authority
DHJS:	Delhi Higher Judicial Service
DPMU:	District Programme Management Unit
DSEAB:	Delhi School Education Advisory Board
DSEAR '73:	Delhi School Education Act & Rules, 1973
DSSSB:	Delhi Subordinate Services Selection Board
ECCE:	Early Childhood Care and Education
ECS:	Electronic Clearing System
EWS:	Economically Weaker Section
GNCTD:	Government of National Capital Territory of Delhi
HOS:	Head of School
IB:	International Baccalaureate
ICWAI:	The Institute of Cost and Works Accountants of India
IEDSS:	Inclusive Education for Differently Abled at Secondary Stage (IEDSS)
KVS:	Kendriya Vidyalaya Sangathan
MC:	Managing Committee
NCERT:	National Council of Education Research and Training
NDMC:	New Delhi Municipal Corporation
NGO:	Non Government Organisation
NHRC:	National Human Rights Commission
NHSRC:	National Health Service Resource Centre
NUEPA:	National University of Educational Planning and Administration
OFSTED:	Office of Standards in Education, Children's Services and Skills
MCD:	Municipal Corporation of Delhi

PTA:	Parent Teacher Association
RTE '09:	Right of Children to Free and Compulsory Education Act, 2009
SAC:	State Advisory Council
SCERT:	State Council of Educational Research and Training
SMC:	School Management Committee
SPMU:	State Programme Management Unit
SSC:	Staff Selection Commission
TET:	Teacher Eligibility Test

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Delhi Aided School Management Association (DASMA)
- 98) Mr. B. L. Singal,
General Secretary,
Delhi Aided School Management Association (DASMA)
- 99) Mr. S. N. Dixit,
Advisor, Delhi Aided School Management Association (DASMA)
- 100) Mr. P. C. Mehta,
Manager, JP Sr. Sec. School
- 101) Mr. K. J. Kuriyan,
Principal JPMSSS For the Blind
- 102) Ms. Manju Bharat Ram,
Chairperson,
J.P. School for the Blind

Representatives from the office of Inclusive Education for Differently Abled at Secondary Stage, Directorate of Education

- 103) Mr. R. P. Yadav,
Deputy Director of Education,
Inclusive Education for Differently Abled at Secondary Stage (IEDSS)
- 104) Mr. Surinder Sharma,
State Coordinator, Inclusive Education for Differently Abled at Secondary Stage (IEDSS)
- 105) Mr. Ashok Kumar,
Superintendent (Admn. Cell)

Representatives of Minority Schools

- 106) Dr. V.K. Williams,
Principal
Mount Carmel School, Delhi
- 107) Dr. Michael Williams,
Dean,
Mount Carmel School, Delhi
- 108) Br. L. D. Lobo,
Principal,
St.Columbus School, Delhi

- 109) Mr. M. Kannan,
Principal,
Faith Academy,
New Delhi
- 110) Sister Nirmalini,
Principal,
Carmel Convent Chanakyapuri,
N. Delhi
- 111) Mr. S. Robert,
Honorary Manager,
Faith Academy,
New Delhi
- 112) Fr. Binny Issac,
Principal,
Don Bosco School,
Delhi

ICWAI

- 113) Mr. J. P. Singh,
Director (Technical), ICWAI
- 114) Mr. Tarun Kumar,
Deputy Director,
ICWAI

EMINENT EDUCATIONISTS

- 115) Professor R. Govinda,
Vice-Chancellor,
NUEPA
- 116) Dr. K. Sujatha,
Professor,
NUEPA
- 117) Dr. Janaki Rajan,
Professor,
Jamia Milia Islamia University

VOLUME - I
Part - I

Preamble

Introduction

Vide their order no. 23(470)/Sch.Br./2010/2036-50 dated 20.04.11 the Government of the National Capital Territory of Delhi constituted a Committee to review the Delhi School Education Act and Rules, 1973 (DSEAR '73), in the light of past developments over 38 years; also to suggest modifications to be made in the Act after the enactment of the Right of Children to Free and Compulsory Education Act, 2009, came into force from 1st April 2010. The copy of Order dated 20.04.2011 is annexed as Annexure-1 in Volume-III. The Review Committee was chaired by Ms. Shailaja Chandra, IAS (retd), former Chief Secretary Delhi and former Secretary to Government of India and included Ms. Abha Joshi, Deputy Director Education (retd), and Mr. Manish Kumar Gaur, Assistant Legal Advisor, Department of Law, Justice and Legislative Affairs, Government of NCTD, as Members of the committee. Mr. Marcel Ekka, Deputy Director of Education acted as Nodal Officer to assist the Review Committee. The terms of reference of the Review Committee were as follows:

1. To examine the Delhi School Education Act and Rules, 1973, comprehensively in light of developments that have taken place over the last four decades in the field of education and recommend amendments/changes in the existing law.
2. To examine the provisions of the Right of Children to Free and Compulsory Education Act, 2009 and DSEAR '73 and recommend changes/amendments to the latter to remove inconsistencies between the two Acts, if any.
3. To suggest any other measures for proper and orderly growth of education in Delhi.

Methodology Followed

The Review Committee issued a Press release on 28.05.2011 in the print media informing the public about the establishment of the Review Committee. The copy of Press release is placed at Annexure-2 in Volume-III. Various important people dealing with the Education sector in Delhi were also informed through e-mail and personal contact about the setting up of this forum and requested to give wide publicity to interested organisations and individuals. The Review Committee invited and received representations from numerous stakeholders including several schools, teachers, parents, managements and associations representing the interests of aided, unaided, minority as well as unrecognised schools in Delhi. More than 110 persons were heard in detail and 56 written submissions and 26 e-mails- were received from a variety of stakeholders. Divergent points of view were expressed on several matters. The opinions and experience cited by the officers of the Directorate of Education were also heard and taken note of. The Review Committee considered these suggestions during its deliberations and in arriving at the conclusions reflected in the Report. The Committee has endeavoured to harmonise different points of view, the most important concern being to prepare a constructive legal framework that

would promote quality education in Delhi schools. The second concern was to support internal autonomy and self-reliance in running the schools, subject to reasonable safeguards that would promote transparency and eschew commercialisation of education.

The Education Scene in India – The Evolution of Schools in Delhi

The Zakir Hussain Committee (1937)

The Zakir Hussain Committee which was appointed in October 1937 submitted its report after the All-India National Educational Conference at Wardha presided over by Mahatma Gandhi. It made recommendations which come quite close to the approach of the recently enacted Right to Education Act of 2009, the major recommendation being “Free and Compulsory Education for Seven Years on a Nation-wide Scale.”

Constituent Assembly Debates

The Constituent Assembly had also debated the provision of elementary education to all children below the age of fourteen years as a Fundamental Right, holding that the question of education was intimately related to democracy and development. Article 45 of the Constitution and the Directive Principles of State Policy state that, “The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, free and compulsory education for all children until they complete the age of fourteen years”. The addition of a time frame of ten years, under Article 45 indicates that the framers of the Constitution were not prepared to wait for more than one decade for this to become a reality.

Kothari Commission

Between 1964 and 66, the Indian Education Commission (often known as the Kothari Commission after its Chairman, Prof D S Kothari), reflected on the nature of the school system that would best meet the demands of independent India. In its deliberations, the Commission noted that a significant number of schools were under private management (see Table 1 below), and recommended inter alia, that a massive programme of improvement of government and government-aided schools be undertaken.

Table-I : SCHOOLS IN INDIA, BY TYPE OF MANagements (1960-61) ¹

Type of Schools	Number of Institutions			Total
	Government managed	Local Authority managed	Privately managed	
Pre-primary	308 (16.2)	247 (12.9)	1354 (70.9)	1909 (100.0)
Lower Primary	72380 (21.9)	184825 (55.9)	73194 (22.2)	330399 (100.0)
Higher Primary	9695 (19.5)	26481 (53.4)	13486 (22.2)	49662 (100.0)
Secondary	3239 (18.8)	2066 (12.0)	11952 (69.2)	17257 (100.0)
Vocational	1729 (41.7)	39 (0.9)	2377 (57.4)	4145 (100.0)
Special	8766 (13.1)	5307 (7.9)	53011 (57.4)	67084 (100.0)
TOTAL	96117 (20.5)	218965 (46.5)	155374 (33.0)	470456 (100.0)

Special Position of Delhi

Delhi as the seat of the Central Government has been an important focal point for the implementation of the national policies on Education. The number of government as well as private schools began to swell in response to the growing needs of the residents and migratory population that settled in Delhi. A considerable part of this expansion was channelled through the newly formed Delhi Development Authority which gave plots on concessional basis to the promoters of private schools with or without conditions.

In Delhi, education was governed by the Delhi Education Code, 1965. This Code became defunct when the Delhi School Education Act and Rules came into force on 24th August 1973. In 1976, the subject of education was transferred to the concurrent List of the Constitution, thus allowing the Central Government to play an increasingly important role in guiding and developing legislation and policy. In 1986 the country adopted a new National Policy on Education, which was subsequently revised in 1992, and still remains the cornerstone of educational planning and administration in India.

While this historical background forms a backdrop for school education in the country, Delhi was administered as a Union Territory and the erstwhile Ministry of Education and Human Resources Development played an over-arching role in determining the education policy for Delhi. In 1993 the capital city became a National Capital Territory in 1993, when the subject of “Education” was transferred to an elected government with the enactment of the NCT of Delhi Act, 1991.

Judicial Interventions

The courts have played an important role in determining the kind of education system that has developed over the years. In the case of *Mohini Jain vs the State of Karnataka*², the Supreme Court ruled in 1992 that the right to education was a concomitant feature of the Fundamental Rights, and every citizen has a right to education. Going further, the Court held that the very act of recognition of private institutions in itself created an instrument of State that could be used to deliver the obligations of the State. This judgment was reviewed in 1993 in the now famous case of *J P Unnikrishnan vs the State of Andhra Pradesh*³, where the Supreme Court pronounced that the right to education was implicit and flowed from the right to life guaranteed by the Constitution under Article 21. The Court went on to state that every child had a right to education till s/he reached the age of fourteen, beyond which the right was circumscribed by the economic capacity of the State.

The latter judgment was of historical significance inasmuch as it outlined the basis of a fundamental right to education. The Constitution was amended through the Constitution (86th Amendment) Act, 2002, which introduced a new Article 21A stipulating that “the State shall provide free and compulsory education to all children of the age of six to fourteen years, in such manner as the State may, by law, determine”. It was this Article that laid the foundation for the eventual passage of the Right of Children to Free and Compulsory Education Act, 2009.

Several other judgments have had an impact on the educational system. The case of *T M A Pai Foundation & Others vs. the State of Karnataka & Others*⁴ was contested in the Supreme Court which established the principle that while unaided educational institutions were entitled to a “reasonable surplus” to develop and expand their activities, education itself could not be commercialised and must remain a non-profit activity.

In the case of *Social Jurist vs. Government of National Capital Territory of Delhi & Ors*⁵, the High Court of Delhi in 2004 directed the Directorate of Education to ensure that unaided schools that had been set up on land bought at concessional rates through the Delhi Development Authority (DDA) would provide free ships to at least 25 percent of disadvantaged children, as provided for in the conditions attached to the sale or lease deeds.

And in another case that year, *Modern School vs. Union of India and Others*⁶, the Supreme Court held that the Director of Education was authorised to regulate fees and other charges to prevent the commercialisation of education; more significantly, the Court ruled that the management was restrained from transferring any surplus funds generated in a recognised school to the parent society or Trust/ or any other institution. On a petition filed by the Private Unaided Schools, this judgment was reviewed by the Supreme Court in *Action Committee, Unaided Private Schools and Others versus Directorate of Education*⁷, and the Court clarified its judgment in the *Modern School* case and held that the 1973 Act and the rules framed there under cannot come in the way of a management establishing more schools. So long as there is a reasonable fee structure in existence and so long as there is transfer of funds from one institution to the other under the same management, there cannot be any objection from the Department of Education.

The latest Delhi High Court judgement on fee regulation announced on 12.08.2011 has recommended that Government establish a Regulatory Body for education. The High Court has itself appointed a committee of three members under Justice Anil Dev Singh, Retired Chief Justice, to look into the hike in fee by schools in Delhi consequent on the VIth Pay Commission.

Different kinds of Schools in Delhi

There are today more than 5000 schools in Delhi with an enrolment of nearly 4 million children. The chart below indicates the distinction between the schools

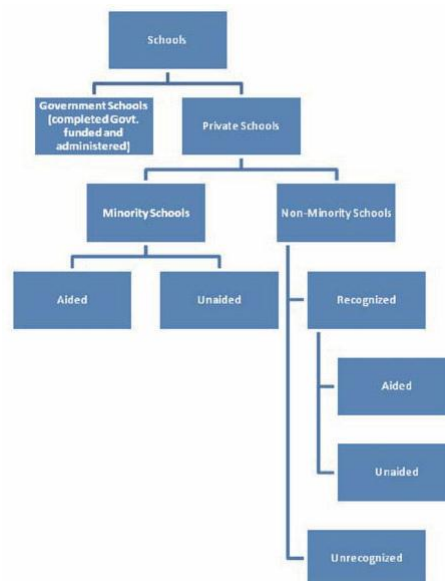


Fig. 1: Different Kinds of Schools in Delhi

Source: MIS-Directorate of Education

Government Schools

- 33% of children enrolled in Delhi attend schools run by GNCT Delhi.
- 24% of the children enrolled in Delhi attend schools run by the Municipal Corporation of Delhi (MCD).

Government Schools as a whole fall under the ownership of the Government of NCT of Delhi, the MCD, NDMC, the Kendriya Vidyalaya Sangathan among others. There are comparatively fewer schools under the New Delhi Municipal Council (NDMC), Dehi Cantonment Board (DCB) and the Jawahar Navodaya Vidyalayas (JNVs).

Table-1: Number of Government Schools – Jurisdiction-wise

	Number of Schools
Delhi Government	2431
MCD	2614
NDMC	83
KVS (Kendriya Vidyalaya Sangathan)	41
DCB(Dehi Cantonment Board)	6
JNV(Jawahar Navodaya Vidyalas.)	2
Total	5177

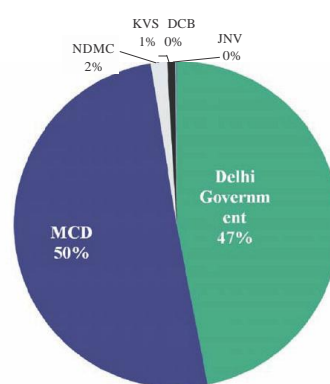


Fig. 2: Number of Schools - Jurisdiction wise
Source: MIS-Directorate of Education

Table 2: Total Number of Schools by Ownership

Owned by	Number of Schools
Directorate of Education	950
Private Schools Recognised by Directorate of Education (Aided)	215
Private Schools Recognised by Directorate of Education (Un-aided)	1266
MCD	1780
Private Schools Recognised by MCD (Aided)	44
Private Schools Recognised by MCD (Un-aided)	790
NDMC	76
Private Schools Recognised by NDMC (Aided)	3
Private Schools Recognised by NDMC (Un-aided)	4
Delhi Cantonment Board	6
Kendriya Vidyalaya Sangathan	41
Jawahar Navodaya Vidyalaya	2
Total	5177

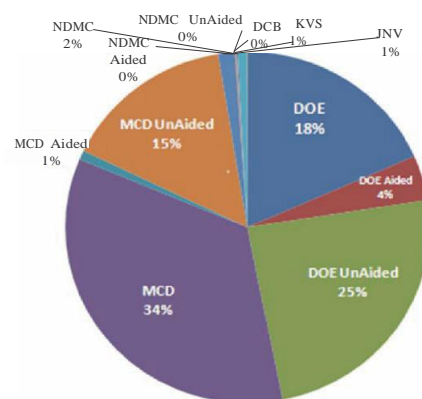


Fig. 3: Ownership of Schools by percentage.
Source: MIS-Directorate of Education

Government Schools First Priority for the Department of Education

The progress and development of government schools is the first priority for the Education Department's education staff. The time of the Education staff goes pre-dominantly in running and supervising Government schools. The results are scrutinised carefully and different measures introduced to improve outcomes by monitoring attendance, teachers' performance and infrastructural needs. As such the need to include the government schools under any statutory oversight mechanism was never felt as the recruitment, training, apportionment of finances, construction, repairs, provision of furniture and equipment are all handled centrally by the Government. The introduction of Vidyarthi Kalyan Samitis with a flexi-pool of Rs 4,00,000 per annum has helped the government schools to attend to day-to-day needs for casual labour, petty purchases or immediate repairs.

The DSEAR '73 did not include the government schools under its ambit except peripherally. Consequently this Report too is largely confined to aided/ unaided/ non-government run schools. None-the-less the Report has suggested a way of introducing a healthy competition among all schools by evolving a statutory mechanism for conducting independent inspections of the entire school sector so that a qualitative picture about teaching and learning outcomes is available. In this way the painstaking work being done in some Government schools would also come to notice. On a broader plane, the performance of all schools across the spectrum would be available for parent's knowledge and for overall bench-marking.

Government Aided Schools

Early History

The system of giving financial aid to privately run societies running schools began in the middle of the 19th century but only on a selective basis. The Government provided Grant-in-aid to the DAV schools and the S.D. Aided Schools run under Sanathan Dharma Society, which started schools in the early part of the last century.

The Anglo Arabic School at Ajmeri Gate, The Anglo-Sanskrit School at Daryaganj and the Inderprastha Hindu Girls School, were other examples of aided schools. From the third quarter of the nineteenth century, the numbers of such schools multiplied, particularly after an interest in the spread of education was evinced by Lord Macaulay and Mr. Wood, the then Secretary of State in the then Government. A number of schools were also set up by organizations like the Khalsa Boards, Islamic Societies and Christian Missions.

Interestingly all these schools undertook to impart modern education blended with their own ideologies which are evident from pre-fixes like Anglo-Arabic, Anglo-Sanskrit, Anglo-Vedic and Anglo-Oriental. Individual founders or members of the trusts and societies of these schools felt socially, religiously and intellectually gratified because they were contributing towards producing educationally enlightened citizens who might otherwise have remained uneducated.

While the well-off paid different rates of fees in such schools, the poor availed of graded concessions. The Managements of these schools enjoyed complete autonomy despite receiving Government grants to pay for teacher's salaries substantially. The Headmasters, Headmistresses and Principals selected by the managements were men and women of high calibre and respect was accorded to their scholarship, administrative capabilities and strong work ethic. The Heads of the institutions remained in the same

position for decades together, and were able to nurture the long-term growth and development of the school. The teachers had to continuously prove their worth through dedication. This created stability and solidarity in the schools and parents who entrusted their children to the school, felt secure and fulfilled. The rewards that these private managements expected were few - social prestige and public good will. Business for them was a mercenary activity; education was a missionary service dedicated to their religious or social ideologies.

Present status of Aided Schools

Presently, the number of aided schools in Delhi under Delhi Government and other local bodies is 262 as under:-

Table 3: Aided Schools by Jurisdiction

Administered by	No. of schools
Delhi Government	215
MCD	44
NDMC	3
Total	262

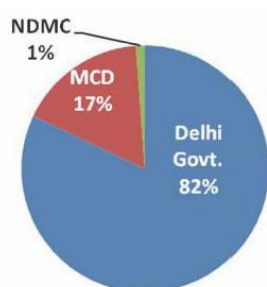


Fig. 4 : Percentage Share of Aided
Source: MIS-Directorate of Education

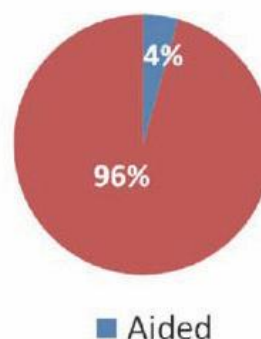


Fig. 5 : Percentage Share of Aided
School to all schools
Source: MIS-Directorate of Education

- The total school going children in Delhi is 3920465.
- The number of children enrolled in aided schools is 171848.
- The percentage share of aided schools in the total enrolment of children is 4%.

Factors that have led to the decline of aided Schools

Until the nineteen seventies, the Board results of these schools were enviable. They outscored the results of most schools and bagged most of the merit positions.

With the expansion of Government Schools the focus of the Directorate's officers shifted on laying new infrastructure. Another agent of change was the introduction of the 10 plus 2 scheme. Already the High School system had been converted to the Higher Secondary system by adding classes XI and XII. However, the campus area and the infrastructure did not change commensurate with the requirements placed by the new

systems. The contributory share of the Management remained 5% of the total expenditure but it actually shot up in many cases.

With the passage of time, the original founders of these Aided schools were succeeded by people who did not necessarily share the same philanthropic spirit. Increasingly profit became a driving force for several school managements.

It was natural that these new factors would take their toll on the administrative efficiency and standards of education. Discipline went down and with it the commitment of the teachers began to diminish. In time this had an adverse effect on the performance of the children.

Effect of DSEAR '73 And Rules on Aided Schools

The Delhi School Education Act and Rules 1973 made a distinction between Government Schools and Government-Aided Schools and Unaided Private Schools. As a result of this, the Managing Committees of aided schools lost the autonomy they once enjoyed. This reduced their control over the staff because of a newly-granted "security of service" which devolved on the teachers. The selection of the staff was now required to be based on internal promotion or on the lists of candidates sponsored by the Employment Exchange. This reduced the chances of recruiting specially identified Principals and teachers who could maintain the high standards for which the schools had once received acclaim. The recruitment of ministerial staff also had to follow exacting rules which in effect disempowered the management who resented external imposition of uniform conditions- leaving no flexibility with them despite being the "owners" of the schools.

The Heads of Schools began to be promoted to the top post by seniority. Many new heads of schools could not do justice to the maintenance of the cumulative heritage of the school or show the leadership needed to promote growth and development. The new Principals unlike the old ones who headed the schools for years together began to have shorter tenures. In certain schools, the Principal ship changed almost every year and the leadership role that the Head of the institution had always provided, became an exception-not the rule.

With an erosion of autonomy, the Managements felt that their schools had become a liability; instead of receiving appreciation, they began to be pulled up for deficiencies. A number of them changed hands surreptitiously to give up what was once a sought after responsibility. A common lament made before the Review Committee was that departmental control had killed initiative, dynamism and creativity within the aided schools. The issues which have to be confronted include the following and they have been addressed in the Report: -

- How to restore a sense of ownership and improve the schools. Under Section 6 (Rules 60 to 92), the Review Committee has recommended restoration of several strategies that would help the financial viability of the schools.
- The issues of takeover of aided schools and relocation of pupils have been addressed.
- In cases where the school is located on private land, the Review Committee has recommended what should be done in Part-II of Volume-I relating to Section 6 and Rules 46 and 47.

Unaided Private Recognised Schools

Historical Growth

The phenomenal growth of private unaided schools in Delhi began in the seventies. Prior to that people preferred sending children to aided schools because not only were the fees low, but they maintained high academic results. Gradually however there came a change in the ethos as the establishment of unaided schools began to give good returns. The aspirations of parents also changed and they wished to send their children to English medium schools with better facilities. This provided an impetus for more unaided schools to get established.

Present Status of Unaided Private Schools

- Almost 30% children are studying in private unaided schools. After including MCD's private schools the enrolment goes to 40% of the total school enrolment of children in Delhi.
- The demand and supply of such private schools does not match, leaving a huge gap between parents' aspirations and availability of seats.
- Government schools despite commendable improvement in results, remain a second or third choice for parents.

Major Concerns Relating to Private School Education in Delhi

1. Mismatch between parents' demand for schooling facilities and availability of seats.
2. Situation of shortages does not lead to healthy competition among schools and promotes monopolies.
3. Private schools (Aided and Unaided) are irked by alleged interference and apathy of Education Directorate.
4. Education Directorate's officers lack the tools to supervise essential features of modern school management or undertake financial scrutiny as prescribed in the statutes of all States, including under the Delhi Education Act.
5. Education department staff is primarily engaged in running and improving government schools which itself is an onerous responsibility leaving little time for private school affairs.
6. An atmosphere of distrust and dissatisfaction has grown between private aided and unaided schools and the Education staff.

The following chart shows that the share of unaided schools in the Education sector has become almost comparable to the size of the Government school Sector.

Table 4: Share of Schools

Type of School	Number of Schools
Government	2855
Aided	262
Unaided	2060
Total	5177

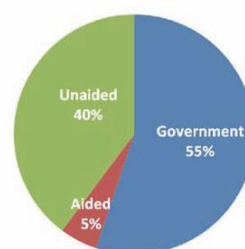


Fig. 4 : Percentage Share of Aided
Source: MIS-Directorate of Education

Effect of the Delhi School Education Act and Rules, 1973 on unaided schools

The Delhi School Education Act, '73, prescribes in detail the manner by which school operations should be overseen and supervised, from laying down the terms and conditions of employment of teaching staff, to the procedure for taking over a school by the Government. Under Section 8 of the Act, unaided schools were earlier required to seek approval of the Director of Education before taking any disciplinary action against teachers. These provisions requiring prior or post approvals of Director of Education were struck down by the High Court of Delhi in 2005 in the case of Management of Geeta Bal Bharti Public School and Kathuria Public School vs. Director of Education⁸ in which the Court held that prior or post facto approval for disciplinary proceedings would have no application to private unaided non-minority recognised schools.

Over time experience shows that the Delhi State Education Act has led to a degree of over-regulation, often negating the very objectives for which it was enacted. On the other hand there is also a feeling that some private school managements have assumed a position whereby teachers and parents have either to accept their demands or remove the child from the school –an extreme step which could have an unpredictable outcomes.

On their side the schools feel that they can never follow a path of rewarding merit and competence as they are hemmed in by bureaucratic wrangling and an inflexible approach to matters which come under the purview of the Directorate of Education.

The enactment of the Right of Children to Free and Compulsory Education Act, 2009, (RTE '09) has introduced a fresh need to revisit the Delhi Act and Rules besides addressing the concerns about autonomy versus regulation of unaided schools. The interface with unaided schools has been dealt with at various places but chiefly in Part-II of Volume-I in Sections 8, 17 and 18.

Unrecognised Schools

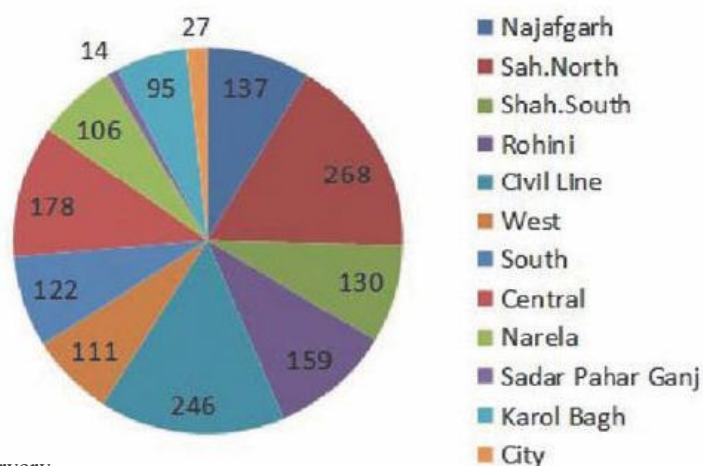
According to a recent survey done by MCD, number of unrecognized schools in Delhi is 1593 and the number of children studying in such schools is 1, 64,000 approximately. These schools are predominantly primary schools. The results of the Survey are at Annexure -3 (Colly.) in Volume-III. Presumably they could not be recognised because they did not meet the land norms of the Government. The Director (MCD) stated before the Committee that no one applied either.

If all these schools are closed down, the fate of tens of thousands of children would be jeopardized. These schools are neighbourhood schools and according to a study conducted by Pratham, an NGO engaged in studying learning outcomes in the country (under the assessment of schools in a municipal ward of Delhi titled Translating Policy into Practice: Right to Education Act ASER programme) many schools are quite good. This may or may not be the norm but it needs to be looked into.

Instead of closing down all such schools, an effort should be made to include as many schools as possible under the umbrella of recognition, subject to the schools possessing teachers of requisite qualification, requisite teacher-pupil ratio and the facilities enumerated in the RTE '09. RTE does not prescribe any plot size but only speaks of the number of rooms and children in each class. In any case, the land norms prescribed by the Delhi Government are executive orders only and need to be re-visited in the changed context.

The Commissioner MCD was requested by the Review Committee vide letter no dated

Zone wise Location of unrecognized schools



Source: MCD Quick Survey

14.09.11 at Annexure 4 in Volume-III to mount a quick survey about the likelihood of such unrecognised schools qualifying for recognition if the RTE norms were to be the benchmark. The response of the MCD dated 26.12.2011 is placed at Annexure 5 in Volume-III and the main findings (although based on a relatively small sample of 257 unrecognised schools out of 1500 such schools) was that RTE does not specify land norms but the Master Plan 2021 does give land norms for granting “recognition” to primary schools. The earlier norm of 200 square yards has been replaced in the Master Plan 2021 w.e.f 7.2.07 in which a requirement of 800 square metres has been stipulated. So according to the response of the Additional Director of Education in the MCD, 16% unrecognised schools would qualify for recognition after 2007 but 61% would qualify if the old norms were to be applied. MCD did not even refer to the RTE '09 requirement as sought by the Review Committee.

While appreciating the work done by the MCD for having conducted a quick survey as requested, the outcomes do not answer what was sought. The Review Committee again requested the Commissioner MCD to have another exercise done and see how many schools would qualify if the RTE '09 norms for space and number of children in each class were to be applied. There was no time left for the Review Committee to wait for a fresh response, particularly as it was apparent that the MCD was circumscribed by the norms of MPD 2021 and may still not agree to conduct a hypothetical study in the face of the MPD requirements of 2007.

This is a major question to be addressed in consultation with the Ministry of Urban Development and Poverty Alleviation. There is a clear contradiction between the land norms of MPD 2021 and the room requirements specified under RTE '09. The Review Committee feels that this distinction needs to be addressed upfront by making the application of MPD 2021 confined to new schools but to allow existing primary schools to be assessed according to the space requirements of RTE '09. The Review Committee recommends that this should be examined by a legal authority of standing and a policy decision taken on the interpretation. As the fate of hundreds of schools hangs in balance and there is a need to have as many schools as possible to cater to the growing demand, it will negate the effort if every primary school is expected to possess 800 sq metres of land which is simply unattainable.

The spirit of RTE '09 seeks very basic requirements to be met and the Act applies to the country a whole. The RTE '09 norms should therefore be followed allowing for tie-up with sports stadia and identified maidans and playing fields to take care of the playground requirements instead of using a norm which appears to be impractical for a city like Delhi. This has been dealt with under Section 4 and Rule 50 of the DSEAR '73.

Recognition of Schools affiliated with International Boards

Due to a climate of globalisation there is an increasing demand for opening schools having affiliation with international examination bodies e.g. International Baccalaureate (IB) and Cambridge International Centre. The Review Committee was informed that there are as many as 84 schools under the IB and 163 schools under Cambridge International Centre all over India which are offering courses leading to a school certificate from these boards.

In Delhi the number of such schools are very few and although some have started such courses as a separate “wing” while still following the CBSE course for the majority of the students, in one school viz DPS International School, Saket it was reported that the entire school is following the Cambridge International Centre system and is affiliated with that Board.. The books and teachers’ qualifications are naturally different from those prescribed for Delhi’s CBSE affiliated school.

The Review Committee has not looked into this segment as this was beyond its terms of reference. It was however noted that the demand for such schools is going to grow particularly with the change in job profiles of parents employed by MNCs and having requirements to re-locate anywhere in the world. Such parents would increasingly seek to admit their children in schools that are affiliated to school Boards which are recognised in those countries. With the growing image of Delhi as a modern international city, due consideration would have to be given to this phenomenon for which a policy needs to be laid down. The Review Committee has not included this aspect in the modifications being suggested to the DSEAR. In due course, an effort should be made to study all aspects of the matter keeping in mind the original terms under which permission was accorded to such schools (for affiliation to foreign boards.)

Administrative Setup of Education Department of Government of NCT of Delhi

Under the Act, there are a number of authorities that regulate education in Delhi. Grant-in-aid, administration and running of government schools are the main thrust areas of officers of the Directorate of Education. An “appropriate authority” is responsible for registration and recognition of all private schools, which is expected to monitor and inspect the schools from time to time. There is also a “local authority” directly responsible for administration of schools under various local bodies. The administrative structure for school management is described below:-

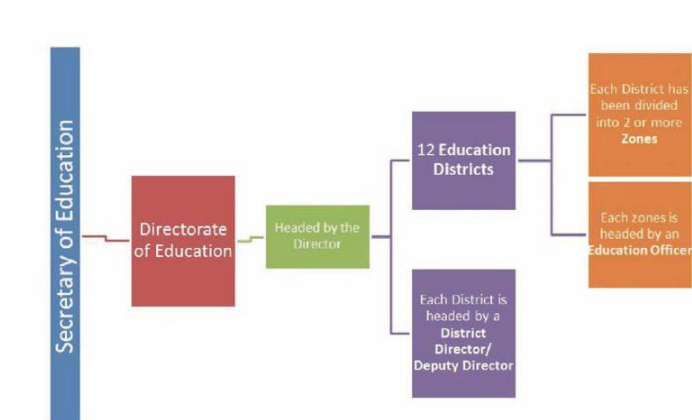


Fig. 7: Administrative Structure for Education in Delhi

(The Secretary Education is generally a very senior IAS officer called Principal Secretary but he/she is predominantly engaged with policy matters. The Director of Education is the entity that the law recognizes and he is generally an IAS officer with 8-12 years of service. The rest of the senior positions are manned by officials that have spent long years as Principals of schools before their posting in administrative positions in the Education Directorate's hierarchy.)

The administrative set up for schools under the MCD is given below: -

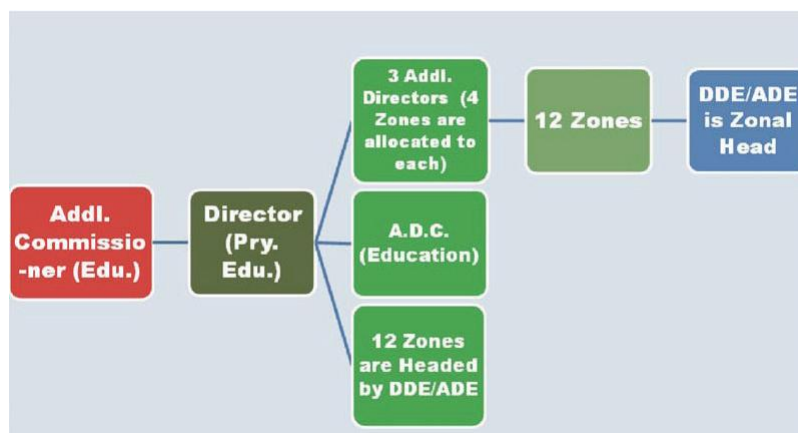


Fig. 8: Administrative Structure for Education in Delhi (MCD).

Reports of Major Committees considered by the Review Committee

Over the years a large number of Committees were set up to look into different aspects of school education in Delhi. These Reports are summarised below and were perused by the Review Committee and the relevant recommendations noted.

A K Sharma Committee 1992

A Committee was set up by Directorate of Education under Chairmanship of Dr. A. K. Sharma, Joint Director NCERT in the year 1992.

Terms of Reference of the Committee :

Assess curriculum transaction in Delhi Administration schools and suggest remedial measures and suggest any other measures relevant for upgradation of standards. More specifically the objective given included the task of analysing the Board results; to go into reasons for the unsatisfactory performance of Delhi students and to suggest ways and

means to improve the working of schools in the academic field as well as in areas of management, planning and administration.

Recommendations

Condition of Recognition be made applicable on Govt. Schools by amending DSEAR '73 so that it would be incumbent on the Director to see that all conditions are fulfilled Scheme of Management be extended to Govt. schools too

Section -24 regarding inspections should be extended to Govt. Schools. Rule 16 and 31 regarding remedial teaching should be made operational.

Instead of multiple authorities for schools like MCD, NDMC, DCB there should be a single authority – DoE, for all schools from primary to Sr. Secondary level.

Over centralisation of authority in the hands of Director needs to be removed.

All schools should be single shift schools.

A Grievance Redressal Committee be set up.

Re-Organisation of Zones may be done so that there are not more than 15 schools in each zone.

P.K. Chandla Committee 1994

Terms of Reference

To examine the existing legislation as well as the draft bill approved by the Metropolitan Council on the subject and to suggest specific amendment/draft legislation which would see that there is proper implementation of desired societal goals in general and government policies in particular.

Recommendations

Unrecognised schools be regulated because in the absence of regulation, the schools were reported to be exploiting children.

It was recommended that every school must seek registration and a record of such schools be kept in every district. Only registered schools should be able to seek recognition.

Aided Schools be renamed as Government Maintained Schools.

Three Special Education Courts to be established.

When a recognised school is taken over, the Government may, if deemed necessary, provide funds to the extent necessary to the school during the period taken-over.

If the period of taken-over exceeds 5 years and if Govt. is of the opinion that the concerned society / trust is unwilling or incompetent to run it, then it may convert the school into a Govt. school. The ownership of assets in use in the school or where acquired out of school funds shall stand transferred to Govt.

Appeals in disputes regarding minor penalties imposed in unaided schools may be made to an Arbitrator.

Veera Raghvan Committee 1997

Though this report was not made available to the Review Committee, yet from references in the subsequent Duggal Committee Report it appears that prior to the Hon'ble Court setting up a committee under Justice Duggal, the Department had constituted a committee

under Shri Veera Raghvan from the Ministry of Education to look into the fee hike introduced by the schools as a result of Vth Pay Commission. The Committee submitted its report in August, 1997.

This Committee possibly accepted that it could not get complete data and details from schools.

Santosh Duggal Committee 1999

After the Vth Central Pay Commission Report in 1996, parents found themselves burdened with a steep hike in fees. Vide judgment dated 30.10.98 in the case of Delhi Abhibhawak Mahasangh Vs VOI in CWP 3727/97 Hon'ble High Court constituted a committee under Justice (Retd.) Santosh Duggal.

Terms of Reference : [As set by the Hon'ble Court]

To look into the case of individual schools and determine on an examination of records and accounts etc., whether increase of tuition fee and other charges on fact would be justified or not, eliminating the element of commercialisation and in the light of this decision the committee would determine fees and other charges payable by students of individual schools.

Recommendations

The recommendations of Duggal Committee were issued in the form of an order dated 15.12.1999.

No Registration Fee of more than Rs.25/- per student shall be charged.

No Admission Fee of more than Rs.200/- per student shall be charged.

No Caution Money/Security Deposit of more than Rs.500/- per student shall be charged.

Fees shall not be increased unless it is found by the Managing Committee of the school that accumulated funds are not sufficient to bear liabilities, if any, in the discharge of its responsibilities provided for under the Act and Rules.

No Annual Charges shall be levied unless they are determined by the Managing Committee to be sufficient to cover all revenue expenditure not included in the tuition fee and 'overheads' and expenses on play grounds, sports equipment, cultural and other co-curricular activities as distinct from the curricular activities of the school.

Earmarked levies shall be charged from the user students only.

Development Fee not exceeding 10% of the total annual tuition fee may be allowed if the school is maintaining a Depreciation Reserve Fund. However, this was raised to 15% in February, 2006 after the directions of the Hon'ble High Court.

Mohinder Committee 2003

This committee was constituted in May, 2003 under Ms. Mohinder, Regional Director of Education by the Director of Education to look into all the problems pertaining to aided schools and to suggest the possible remedial solutions.

Terms of Reference

- (a) To decide the fate of taken over schools.
- (b) To decide about the mis-management of the school in the matter of surplus teachers, payment of 5% share of management towards salary, gratuity

- (c) To decide about flexibility in provide funds to aided schools to meet the financial crunch.
- (d) To decide about declining standards and falling enrolment
- (e) To decide about reserve funds as per the latest norms.
- (f) To decide about donation related admissions
- (g) To decide improved methods of conducting SSC
- (h) To decide about common seniority issue in the light of Rule 109
- (i) To decide about speeding up of service matters of employees of aided schools

Recommendations :

Regarding taken over of schools – if no genuine management comes to take back the schools, it may be owned as a Government School after expiry of 5 years. Its land and all other assets to be restored to the Government.

Grant-in –Aid (GIA) be increased from 95% to 98%.

90% of actual electricity and water bills to be paid. Only voluntary donation to be allowed which must be clearly accounted for.

For improving process of selection, the proceedings of Selection Committee be completed on the same day and all papers prepared and signed the same day.

For meeting the financial crunch, the schools be allowed to hike the Pupil Fund and also invoke Rule 151. This rule provides that the Managing Committee of an aided school may charge with the previous approval of the Director, a development fee from the students in order to cover expenses incurred in effecting special improvements on which no aid is admissible such as appointing additional teachers for special subjects or for providing special amenities to students.

If enrolment falls below the norm, the school be closed. Children and teachers be adjusted elsewhere and all its assets be acquired by Govt.

Reserve fund be raised to Rs 1 lakh + Rs. 80 per student as per norms of maintenance of school building. Managements be asked to deposit in Reserve fund three months' salary of staff plus Rs.50,000 towards its share for retiring employees.

Krishan Kumar Committee 2006

The committee was constituted regarding admission of children of EWS quota in private schools which had been given land by the Government. This committee submitted its report on May, 2006.

Terms of Reference :

To look into the manner and modalities of admission of children of economically weaker section of society under free ship quota, including financial support to such students by way of textbooks, uniforms etc.

Recommendations:

- (1) Policy to provide quota be applied uniformly to all private schools. This is necessary for systematic reforms.
- (2) EWS children should form a substantial proportion in a class / section. They must not be segregated lest they feel alienated.

- (3) Implementation of this provision must not be in terms of mechanical insertion of the poor in a private school. There should be receptivity and attitudinal change on the part of teachers.
- (4) Freeship quota to be introduced at entry level of nursery classes so that children get an opportunity to grow together. EWS children will progressively reach all classes.
- (5) Eligibility criteria should be BPL card holder or annual family income less than 1 lakh.
- (6) District Admission Centre be set up to regulate admission under freeship policy.
- (7) Admissions under freeship policy be done by lottery.
- (8) Financial support in terms of books, uniform, shoes, mid day meal etc. should be provided by Government to EWS children, admitted under freeship quota. Government should also pay for their transport.
- (9) Training of teachers to be undertaken to sensitise them to implement this policy.
- (10) Monitoring mechanism be set up.

Sub Committee under Dr. Janaki Rajan 2006

This Committee dealt with evolving modalities for sensitising teachers for integrating EWS children in private schools.

Recommendations :

The Committee observed that the biggest barrier to integration was the mindset of Teachers. Sensitization to alter this must form the back bone of their training :

- (1) Make non-discrimination a school policy
- (2) Prepare general rules for teachers to take extra care of children from backward sections
- (3) Orient teachers on subject teaching skills
- (4) Orient teachers on when and how to introduce English and Hindi.
- (5) Workshops to be conducted.

Ashok Ganguly Committee 2007 (1)

In LPA 196/2004 on 4th September, 2006 Hon'ble High Court of Delhi constituted a committee of experts in the field of education to recommend a common procedure for admission of children to nursery classes in private schools in Delhi. The Committee was set up under the Chairmanship of Sh. Ashok Ganguly, Chairman, CBSE. The Report was submitted in October, 2006.

Terms of Reference:

To suggest ways and means to eliminate the system of interview, bring about transparency and minimise the discretion of Management/Principal in the process of admission of children to nursery classes.

Recommendations :

The admission process should promote diversity of students' population in terms of socio-economic status, professions of parents and preserve gender parity.

Eliminate interviews of children. No observation of children either in formal or informal settings.

Transparency to be maintained.

No Lottery system to select children.

Management quota not to exceed 10%.

Ashok Ganguly Committee 2007 (2)

In WPC12490/2006 Hon'ble High Court directed the committee to prepare a viable and comprehensive policy for pre-primary education in Delhi so that admissions to pre-primary classes are made homogeneous and uniform. The main issues were –

What should be the minimum age for a child to be eligible for admission to pre-primary class at entry level?

What should be the cut off date for determining the age of a child for the purpose of admission to pre-primary class keeping Sec-16 of DSEAR '73 in view?

What should be duration of pre-primary classes?

Recommendations:

Duration of pre-primary should be 1 year and it shall be a class immediately prior to class-I.

Minimum age for admission in class-I shall be 5 years or on before 31st March of the academic year.

There should be separate designated space and ambience within the same campus for pre-primary sections so that children are not overawed by older ones. Duration of such classes may be only 3-4 hours, 5 days a week.

Facilities such as child day care centre, Nursery, Kindergarten crèche etc. shall come under Pre-school class.

Pre-school classes shall not be a part of main school.

Content and methodology for pre-school should be different from a formal school. It should take into account matters like health, nutrition etc.

Right of Children to Free and Compulsory Education Act, 2009

- The Act provides for education to all children between the age group of 6 to 14 years as a Fundamental Right guaranteed under Article 21A of the Constitution. In a significant departure from earlier practice, the Act places the onus of ensuring that children attend and complete elementary education upon the State (through the appropriate authority), rather than on the parents or child. The State has been given the responsibility of removing all social, economic or physical barriers that may prevent a child from completing elementary education. Under the Act, all children must be enrolled in an age appropriate class, and those who have never enrolled or dropped out must be afforded opportunities to reach the age appropriate level through special remedial classes organised within the school premises.
- Section 2 (n) of the Act defines “school” as any recognised school imparting elementary education and includes:-
 - (i) A school established, owned or controlled by the appropriate authority
 - (ii) An aided school receiving grants or aid to meet the whole or part of its expenses

- from the appropriate government
- (iii) A school belonging to a specified category; and
- (iv) An unaided school not receiving any kind of aid or grants to meet its expenses from the appropriate government or the local authority
- Section 3 provides that every child of the age 6 to 14 years shall be provided free and compulsory education in a neighbourhood school till the completion of elementary education. For the purposes of this Section, no child shall be liable to pay any kind of fee or charges or expense which may prevent him or her from pursuing and completing elementary education.
 - Section 10 provides that it shall be the duty of every parent or guardian to admit or cause to be admitted his or her child or ward as the case maybe, to an elementary education school in the neighbourhood.. As the Act covers children between the ages of 6 to 14 years only, in accordance with the Constitution (86th Amendment) Act, 2002, Section 11 states that with a view to prepare children above the age of three years for elementary education and to provide early childhood care and education for all children until they complete the age of six years, the appropriate government may make necessary arrangement for providing free pre-school education for such children.
 - Section 12 of the Act has generated the most argument amongst private unaided schools. This Section, in pursuance of the Act's objective of making schools institutions of social integration as opposed to institutions of segregation, provides that even unaided schools and schools of a specified nature (Kendriya Vidyalaya, Navodaya Vidyalaya, etc), must provide free and compulsory education to children from disadvantaged backgrounds, to the extent of at least 25 percent of their strength in the entry class (Class 1 in normal circumstances and Kindergarten if there is a pre-primary section attached to the school). Although the Act provides for reimbursement of the cost per child to unaided schools at the State's cost, or the school's, whichever is lower, unaided schools have viewed this provision as an encroachment on their freedom to operate with due autonomy considering that they were privately established with no support from the State.
 - The Act also stipulates that no school can collect any capitation or any other fee that has not been clearly and publicly specified in advance. Screening of children or their parents has been banned. Schools are no longer allowed to detain children in a class, or to expel them for any reason, which according to several representationists that appeared before the Review Committee is likely to lead to serious discipline issues. Teachers have also been prohibited from using corporal punishment, or from undertaking tuition classes of any sort.

Admission of EWS Children against 25% free Seats (Free Ship)

Although the system is admittedly in its infancy, several difficulties are being faced which have to be addressed before the problems escalates. These challenges include the fact that Illiterate parents are ignorant about the procedure and unable to access admission forms. They remain ignorant about opening dates of admission. Genuine cases do not get admission under this quota and the seats are often filled with the children of those whose income is substantially higher than the EWS limit of rupees one lakh per annum. The re-orientation of teachers has not had the necessary impact.

Keeping all this in mind it is felt that a common form maybe developed by Department for EWS and special need children. The Form for selected category children may be filled online through an Agency which would fill the names of 5 unaided schools within a radius of 3 Km radius from the house. The outsourced agency may be appointed district wise. And undertaking may be taken from parents that if any wrong information is given, the school may cancel the admission and report it as a case of cheating a public authority. For such children a draw of lots using computer may be held with the actual verification of documents done by the school.

This would only be a support to the implementation of RTE '09 Rules and would help the Directorate to keep track on children admitted under the EWS category. The system should be only for monitoring and facilitating admissions in the EWS category and not a means for Government to take over more functions. This has been dealt with in Part-II of Volume-I under Section 16 Rule 133.

Pre-School Education

This is another important area which has to be addressed. RTE stipulates 6 years when the right to education becomes a right but the Act does not disallow admission at an earlier age. Under DSEAR '73 the age of admission is 5 years and this has been continuing until now. Recently, the matter of age for admission in class I was taken up by the High Court of Delhi and the Court vide order dated 21.12.2011 has retained the age of admission as provided under the DSEAR '73.

Most schools are running pre-school classes under different nomenclatures like UKG/ LKG, Prep/Nursery, and KG/Nursery. The High Court Order dated 23.03.1999 in CWP No. 3723/1997 makes such schools run by same society as a part of the main school. Under section 11, RTE '09 provides that in order to prepare children above the age of 3 years for elementary education and to provide early childhood care until they complete age of 6 years, Government should make arrangement for pre-school education.

Studies reveal that there is better retention of under privileged children if they have attended pre-school classes. Against this background the Review Committee has made recommendations under Section 16 and Rule 145 of DSEAR '73.

Highlights of the Review Committee's Report

The Review Committee had the challenging task of addressing major as well as minor changes that needed to be incorporated in the legislation as well as suggest administrative changes which would promote the development of school education in a way that children benefit from the hours spent in the school. A blend of autonomy and supervision was clearly required keeping in view past experience and the need for school expansion to keep pace with the changing demographics as well as current aspirations of parents. It was also felt that the proposed legislation as well as the administrative measures provided should leave scope for the management and teachers to deal with children in a way that rewards achievement in diverse spheres, nurtures talent and gives freedom to adopt methods which help the qualitative output of classroom learning.

Many of the recommendations made by the erstwhile committees (summarised earlier in the Preamble) were practical but they did not see fruition because those recommendations

could not be incorporated without making a change of law. The Review Committee therefore lauds the Government of NCT of Delhi for having taken the initiative to address the issue of modifying an Act which is nearly 40 years old and which in many ways was made at a time when the role of government was over arching — a factor which has altered a great deal over the years. There is an increasing perception that the private school sector is doing well and the schools should be left to function independently which alone would promote innovation and competitiveness. But equally it is the core responsibility of the Government to supervise critical aspects of the educational system that impact upon school management as well as child learning. To that extent, the Review Committee was of the view that a climate of complete laissez-faire could destroy school education and while the competence of the staff to extend supervision where it is most needed is not of consistent standard, the answer did not lie in leaving 1300 schools to act as they pleased. The Review Committee was also guided by the recent approaches of State Governments on fee regulation which had been upheld by the Courts.

The Review Committee heard several stakeholders at length. The Review Committee did not visit the schools as each member already had extensive exposure to the working of the schools, while working in different capacities. The Review Committee has instead relied upon the points of view expressed before them it but also given due importance to the experience and advice of leading educationists, officers of the Central and State Governments connected with the subject of school education and taken into account a cross-section of views expressed in formal and informal settings by numerous organisations and NGOs. In all 20 formal meetings were held with associations and groups. These copies of minutes are placed as Annexures-6 (Colly.) in Volume-III) (No minutes have been included of smaller meetings with individuals and experts). As several people came in groups all the names are not being recounted). Some organisations/associations and individuals that assisted the Review Committee in depth included:

1. Ms. Gita Sagar, Ex Secretary Education.
2. Mr. N. P. Kaushik, Presiding Officer Delhi School Tribunal.
3. Ms. Rashmi Krishnan, Director, SCERT.
4. Ms. Prem Lata Kataria, Director Education, MCD
5. Ms. Pratibha Sharma, Joint Director, SCERT.
6. Prof. I. S. Bakshi Principal, Dyal Singh College
7. Deputy Directors of Education of all Districts
8. Ms. Kakoli Maiti, Assistant Director (Plg.) from the Delhi Development Authority deputed by VC (DDA)
9. Ms. Rukmini Banerji, Director, Pratham
10. Chartered Accountants from Sood Associates and from Shiromani Tyagi Associates (Mr. Pradip Tyagi and Mr. Ketan Vohra).
11. Associations and Representatives of unaided public schools
12. Associations and Representatives of aided schools
13. Associations and Representatives of unaided minority schools
14. Dr. G.R. Kanwal, Ex-Principal, ASVJ Senior Secondary School, New Delhi.
15. Mr. R.C. Jain and others representing unaided recognized and unrecognized schools
16. Ms. Jayanti Prakash, Programme Officer, “Save the Children”-NGO

17. Mr. Prasanta Kumar Dash, State Programme Manager, “Save the Children”-NGO.
18. Officers from Institute of Cost and Works Accountants of India and Chartered Accountants.
19. Mr. Ambarish Rai, RTE Forum
20. Ms. Mani Gupta, Senior Associate, SARTHAK Advocates & Solicitors.
21. Mr. Abhishek Tripathi, Partner, SARTHAK Advocates & Solicitors.
22. Representatives of other NGOs:
 - i. Dr. Ranjana Kaul,
Chairperson, Shiv Niketan Education Society (Regd.)
 - ii. Mr. Karan Bhagat,
Co-ordinator, A.P.R., Delhi RTE Forum
 - iii. Mr. Saurabh Sharma,
Director, ‘JOSH’
 - iv. Mr. Ashwani Kumar,
President, ‘YAATRA’
 - v. Md. Faisal Khan,
Project Manager, ‘EFRAH’
 - vi. Mr. Sachin Sahoo,
Programme Co-ordinator, Society for all round development ‘SARD’
 - vii. Ms. Anjela Taneja,
Programme Co-ordinator Education, ‘OXFAM INDIA’
 - viii. Mr. Ramesh Pranesh,
Director,
‘SARTHAK’
 - ix. Mr. Shailendra Kumar Sharma,
Programme Director, Pratham, Delhi
23. Representatives of Parents’ Association
 - i. Mr. Ashok Agarwal,
Advocate & President, All India Parents Association
 - ii. Mr. Inderjeet Singh Gambhir,
General Secretary, All India Parents Association
 - iii. Ms. Poonam Goel,
Co-ordinator, All India Parents Association
 - iv. Ms. Meena,
Co-ordinator, All India Parents Association
 - v. Mr. Khagesh B. Jha,
Advocate & President, Justice for all

Fifty-six written responses and twenty-six email responses were received which have been summarised and tabulated at Annexure 7 (Colly.) in Volume-III.

The Review Committee also had interaction with a body of leading educationists and those running a chain of unaided private schools in order to elicit across-section of views. These educationists were :

- i) Prof. R. Govinda, Vice-Chancellor, NUEPA
- ii) Prof. Janaki Rajan, Jamia Milia Islamia University
- iii) Prof. K. Sujatha, NUEPA
- iv) Ms. Rashmi Krishnan, Director, SCERT
- v) Mr. Vinod C. Khanna, Founder Trustee, Pratham
- vi) Mr. Sushil Dutt Salwan, Trustee of Salwan Education Trust and Senior Advocate
- vii) Mr. D. K. Bedi, Principal, Apeejay School, Pitampura
- viii) Mr. Vinay Rai, President, Rai University
- ix) Ms. Annie Koshi, Principal, St. Mary's School, Safdarjang Enclave
- x) Mr. Om Pathak, Chairman, SelaQui International School, Dehradun

The Review Committee has tried to take into account all the relevant court orders as well the advice given by various committees suggesting amendments to DSEAR '73. The aim was to update the Act in keeping with the current situation but also by reflecting useful suggestions which came from a range of experts. The availability of IT tools to increase efficiency and reduce staff dependence was also borne in mind.

Major Issues and Challenges Facing the School Education Sector

Parental Preference for Private Schools

Unlike other places in the country, the final examination results of all Delhi schools are comparatively quite good. Although Delhi does not face the challenges of running a large number of rural schools as happens in the rest of the country and of administering different Boards of Education, it has its own challenges. Among these the most important factor is the growing aspiration of parents to provide education which would ultimately lead to career options for their children marked by a preference for professional courses followed government jobs. Parents have also understood that the pursuit of academic excellence in terms of examination results alone would not lead to the best career options for their children unless there the all-round development of the child through extracurricular activities and personality building is also given importance. It is the belief of most parents that these aspirations can be met only by private unaided schools and therefore the rush to gain admissions commences right from the nursery stage particularly in schools that provide nursery classes/pre primary class admission until the school leaving stage. In municipal schools the students after completing class V get automatically transferred to Delhi Government Schools. In the case of private schools the tendency is to stay rooted to the same school.

Fee Regulator

Another factor which has to be taken into consideration relates to fee fixation. There is no doubt that there has been an all-round rise in prices of utilities. Salaries have had to keep pace with various factors not the least of them being the announcements made by various Pay commissions. The need to match such legitimate demands for increase of

fees with complaints about commercialisation of school education had to be balanced by the Review Committee with solutions that would be sustainable and relatively simple to administer. It was recognised that Government has a responsibility to see that private schools are accountable for the fees they charge and the alternative of removing a child from a school because of what parent may feel is an unacceptable increase in fee is not a viable option. Besides it can affect the mental well being of a child to be uprooted from a school simply because the fees become unaffordable for parents. More importantly in the situation prevailing in Delhi there are no choices available except for withdrawing a child and admitting him in a government school- an alternative which is never exercised.

The Review Committee had the benefit of interacting with the Principal Secretary Education Mr. Rakesh Mohan and the Director of Education Mr. Diwan Chand. The broad framework of the Report was discussed with them and their suggestions taken into account. These suggestions dealt with: -

- Issues relating to minority institutions.
- Autonomy of Private Schools.
- Public-Private-Partnership in Schools.
- Norms of Recognition of Schools.
- Admission of Children with Special needs.
- Admission in EWS category children.
- Taking over aided schools which do not wish to continue or who have abandoned their responsibilities.
- Vocational courses for skill development to be allowed to use vacant space efficiently.
- Appointment of special managerial staff for supporting the Education staff.

These matters have been dealt with in Volume I of the Report in the concerned Sub-chapters.

Another issue which had to be addressed was whether to suggest bringing government schools under the ambit of the Delhi School Education Act or not. In this the Review Committee heard the views of leading educationists who favoured doing so but it was guided by the prevailing system operating in other states. In all States the Director Primary Education is a part of the Education Department of the State along with separate Directors for Secondary and Senior Secondary schools. However in Delhi, the schools running from class I to V comes under the administrative control of the MCD and in some cases the schools are under the jurisdiction of the Delhi Government. While not attempting to suggest structural changes because of the unique status of Delhi, under Rule 196 some provisions of the proposed Act and Rules have been made applicable to government schools where feasible and necessary.

Methodology and Structure of the Report

The Report is presented in three volumes as follows:

Volume 1 contains the Preamble as Part I followed by Part II in which an examination of issues related to each Section of the DSEAR '73 and Rules along with action recommended to be taken is spelt out. In other words each subchapter of Part II of the Report refers to the prevailing law, various issues that were brought up and finally the action recommended to be taken by the Review Committee.

Volume 2 is a Compendium setting out the existing and proposed changes in the law (covering the relevant Sections and Rules in the existing Act) and recommending modifications in legal language presuming that the Review Committee's approach is accepted. This would facilitate moving legislation but it is important to understand the issues before looking at the existing and proposed change of law. The changes/ additions in the law are reflected in bold lettering to facilitate readership.

Volume 3 contains Annexures, Minutes of meetings, a summary of suggestions made by email and supporting documents referred in the Report.

Administrative issues connected with the First term of reference

To examine the Delhi School Education Act & Rules, 1973 in the light of developments that have taken place over the last four decades in the field of education and recommend amendments/changes in the existing law

The Review Committee examined the provisions of the DSEAR '73 in light of developments that had taken place over the last four decades in the field of education. The Committee has inter-alia recommended amendments in the terminologies used in the DSEAR '73 in the light of the changed administrative setup. It has recommended modifying the terms "Administrator" by the term "Lt. Governor" and "Government" at appropriate places in the modified Act.

The relevant judicial pronouncements have been proposed to be incorporated in the modified Act. These include the terms and conditions of employees of private schools, approval of the Director not required to be obtained by unaided schools and minority schools in respect of disciplinary measures taken by them, enhancement of the jurisdiction of the Tribunal, issues relating to minority educational institutions and fee regulation. Matters like obtaining a fire safety certificate, commercial use of school premises to be impermissible and anti-raging measures have also been included.

Administrative issues connected with the Second term of reference

To examine the provisions of the Right of Children to Free and Compulsory Education Act, 2009 and DSEAR '73 and recommend changes/amendments to DSEAR '1973 to remove inconsistencies between the two Acts, if any

The Review Committee examined the provisions of the DSEAR '73 and RTE '09 and found certain inconsistencies in the provisions of the DSEAR '73 with the provisions of RTE '09. To remove such inconsistencies, the Review Committee has recommended amendments/changes which include, -

- Changes in the definition of the term "school" in view of the fact that after 01.04.2013 no unrecognised school can continue to function.
- Synchronisation of the term 'pre-school' and 'pre-primary', working days in a school, age of admission in class-I and pre-school.
- Removal of the provision of corporal punishment.
- Provision for appointment of Special Education teachers for children with disability.
- Initiatives to be taken for achieving the objectives of RTE '09.
- Elaboration of the meaning of Managing Committee (DSEAR '73) and School management Committee (RTE '09) by renaming the 'management committee' under DSEAR as 'Managing Body'.

Administrative issues connected with the third term of reference

To suggest any other measures for proper and orderly growth of education in Delhi.

Administrative Structure of Education Department

While the number of schools in Delhi has grown phenomenally since DSEAR '73 was enacted, the structure at the higher administrative levels has not changed much. When the Act was made, the Director of Education was at the level of Deputy Secretary/ Director to the Government of India or an officer who generally had less than 15 years of service. The responsibility have grown manifold since then and there is a need for a Director of Education to handle the formulation of policy, deal with contending demands, and use his position to address issues raised by various non-governmental organisations who have a direct stake in education. Usually an IAS officer after getting senior scale (four years after joining service) spends the next 8 to 10 years functioning in the States and Union Territories serviced by the AGMUT cadre but has seldom occupied a senior position at the helm of policy formulation. The Director of Education is defined under the Act and it is a pivotal position. It would not be prudent to continue that designation but the canvass is too large to be handled by officers who do not have adequate exposure. The Director should be an accessible person, one who has an interest in the subject and is open to new ideas.

The only other Department which has to deal with so many employees is the Commissionerate of Police and although the functions of the two Departments are not comparable, the very size of the sector comprising 5000 schools (including MCD), more than one hundred thousand teachers and an enrolment of more than 4 million children requires a much stronger administrative setup. It was informed that a large number of posts of DANICS officers had also been created recently and therefore unless the functioning of the new system becomes a reality, it would be premature to comment upon its working. DANICS officers may help tone up the administration but the inputs of education staff are vital and much more investment is needed here.

Two broad recommendations which can be considered would be to immediately elevate the position of the Directors of Education of GNCT and of MCD to the level of super timescale (Joint Secretary at the Centre or Commissioner in the States.) If there is a shortage of officers because of the posting challenges that beset Delhi and other States/ UTs serviced by the AGMUT cadre, the government could consider reorganisation of Departments. In the long term, there is sufficient justification to create two cadre posts at Joint Secretary Level to man the position of Director of Education in the MCD and in the Delhi Government. Such officers should not be moved for at least three years as it takes time to understand the working of the Department. In the MCD it might be possible to also induct an educationist on deputation if the post is operated at a higher level as there may be an advantage in bringing a person who has handled primary education in a State set-up and is also in a position to shoulder the requirements of overseeing the 25 % quota which would apply to schools running Pre-school classes. It appears necessary to consider segregating the portion of senior secondary and school imparting education from schooling upto VIII with the introduction of RTE '09 which will require focussed attention.

Need for MIS and Support System

The Review Committee met the Deputy Directors of Education too. There is every need to quantify their responsibilities and to have their Annual Confidential Reports reflect

specific performance benchmarks which have to be segregated between government schools and other schools. Over-centralisation appears to have undermined the initiative and the authority of the Deputy Directors and unless they are left to manage the schools within their jurisdiction without centralised control, they would increasingly function as post-offices complying with a plethora of instructions emanating from the Headquarters. Too much time of these officers appears to be spent in the follow-up of individual cases leaving no time for effective planning and supervision of the schools. These Deputy Directors of Education and the Education Officers that report to them have no district based MIS which is updated regularly. In the absence of that their role vis-à-vis private unaided schools becomes reactive only. There is every need to give them the tools that would equip them to work in a meaningful way. To give an analogy, the National Rural Health Mission under the Ministry of Health has funded a State Programme Management Unit (SPMU) and a District Programme Management Unit (DPMU) in 15 high focus states for the last 5 years. As a result of this, the Mission provides a Program Manager who generally has an MBA qualification assisted by an Accountant who has a CA qualification and a Training Coordinator to assist the Mission Director at the state level, and the District Medical Officer at the district level.

That system appears to be working quite well and it allows for proper managerial inputs to be collected and provided to key functionaries. It would be very useful if Government of Delhi were to consider setting up a Management Unit to assist the Directors of Education in GNCTD and in MCD and to also set up a small Managerial Support Group at each district level to assist the Deputy Directors. A proper training programme would have to be devised to be able to derive best advantage from such a strategy because more than anything else it is aimed at improving management and not at increasing paper-work or making the offices top-heavy.

The structure and design of such management units to assist the Director of Education and the Deputy Directors would need to be worked out but this could be done in Mission mode and could be created purely on contractual lines. The 12th plan is the right time to do it and it can be reviewed after five years. The filling up of the positions should be done through an agency and not through DSSSB as these would be contractual positions and there is every need to see that the persons recruited are selected on the basis of their qualifications and ability to work independently on the computer. In the case of NRHM the filling up of these positions has been done largely by the National Health Service Resource Centre (NHSRC). On similar lines this activity could be outsourced to a suitable agency in Delhi which has domain experience in recruitment of staff who can manage the MIS and churn out exception reports. Such supporting staff would be responsible for collecting data, compiling it and giving progress reports to the Director of Education and the Deputy Directors of Education on formats which are designed to reflect key factors. That would equip the officers to see the totality of what is happening and to be able to pay attention to weak areas.

New Model for Inspection of Schools

The existing school inspection system for Delhi Schools is not working effectively which was and nitted by the Education Directorate's own officers. Under the Act every school has to be inspected once a year and the form prescribed is quite lengthy whether one goes by the Schedule prescribed in the Act or the new form which was prepared in-house and introduced a few years ago by the Department for being used at the time of inspection.

With nearly 5000 schools to be inspected by the less than 100 officers of the Education Directorate of GNCT and MCD, in effect no worthwhile inspections are possible and because of this it has become a neglected area. Inspections are vital for overseeing the quality of education and understanding children's learning outcomes long before the Class 12 examinations take place which is the final turning point. The Review Committee considered the paucity of resources and the inability of Government to directly engage its officers in conducting qualitative inspections across the board. Hence the acclaimed Office of Standards in Education, Children's Services and Skills (OFSTED) model of UK was studied by the Review Committee and its approach appears to be eminently suitable for a city like Delhi. There might be other schools inspection models too which can be examined, but the Review Committee used this example as it appeared to be a feasible option for Delhi Schools.

OFSTED Model of UK

A simple school inspection system has been introduced in England under section 5 of their Education Act 2005 w.e.f. September 2009. The note at Annexure 8 (Colly.) in Volume –III describes how the general principles and processes of school inspection should be undertaken for all kinds of schools in England. There is a statutory basis for school inspections in the UK; The Note at Annexure 8 summarises the need for purposeful inspection, its scope and key features. It indicates the legal requirements for the inspection of schools, the timing of such inspections, the principles of inspection, the relationship between schools and the evaluators and the bench-marks used by the inspectors. In the OFSTED approach the focus of school inspections is largely on first-hand observation of class teaching and participation. The school inspection reports provide a written commentary on the quality of teaching and its impact on learning. The OFSTED ratings of Schools are published regularly so that parents can make a choice of schools based on these independent ratings.

This independent reporting provides the Education Department and the Parliament of UK (it is a law for the whole country) informed about the working of the schools. It provides an assurance that minimum standards are being provided and the confidence that public money (or parents' money) is being used properly. In the process of evaluating learning and teaching inspectors spend a high proportion of time on on-site inspection in the classroom. They assess how well school programmes promote equality of opportunity and how effectively they tackle discrimination. They check procedures meant for safeguarding children and young people from harm. They look at the engagement of head teachers, school staff and governors in the process of inspection so that they understand the judgements made.

In Delhi, this framework could be modified but would definitely be useful.

- (i) It would be necessary to bring the idea of external/ independent inspections under the ambit of the Delhi School Education Act.
- (ii) Inspections are already provided under Section 24 of the DSEAR '73. The principles which are in the UK of statute are necessary for all schools and with the coming of RTE '09 greater oversight would be needed.
- (iii) Such grading/ bench-marking of the quality of class-room teaching and the extent to which the EWS children are getting assimilated in each school would give rise to healthy competition and provide an objective way of assessing in-school performance.
- (iv) Agencies would need to show the qualifications and experience of the human resources

they would engage for conducting inspections, the training that would be provided to the inspectors along with the costs involved for undertaking the work assigned by the Education Department.

- (v) The Education Department would administer the processes (selection of schools to be taken up every year etc) and would own the Reports before the Government and parents. There would be no need for the Education staff to visit the schools and their role would be administrative and supervisory vis-a-vis the Agency but not requiring direct interface with the schools.

In case this model is considered for Delhi schools then a new provision is needed in Rule 190 of DSEAR '73 to empower the Director to engage agencies having the wherewithal to conduct inspections under Section 24 of DSEAR '73.

Conclusion :

This Report essentially suggests changes and modifications which need to be made in the Delhi School Education Act and Rules '73. The work is based on the written and oral submissions made by a wide range of stakeholders and the relevant experience garnered from some state governments. While addressing an extensive number of issues, justification has been provided for suggesting every change and in the alternative for maintaining the status quo. Provisions which appear anachronistic in today's context or have been annulled by the courts have been recommended to be omitted from the new legislation after giving reference to the specific judicial pronouncements. The need to increase the number of private schools to meet the rising demand as also to meet the needs of children out of school with the coming into force of the Right of Children to Free and Compulsory Education Act, 2009, have been referred to in detail.

Only the government can set up a mechanism whereby complaints and grievances can be heard and disposed of promptly and fairly. This too occupies a major part of the Report.

The situation in Delhi is quite different from what prevails in other states, including the capital cities. The cost of school education is higher than anywhere else in the country but the earning capacity of many families is such that they do not mind paying substantially higher fees. One point of view is that it is a matter between the school and the parents and if the latter can afford to pay the fees, government has no role in laying down conditions and bench-marks. The other point of view is that if left without any checks, many private schools would charge fees which bear no relationship with the cost of education which would amount to commercialisation. It is precisely for this reason that the Courts have come down heavily on commercialisation and made governments responsible for providing oversight whether by setting up a regulatory mechanism to oversee fee fixation and or its enhancement or through any other means. The Review committee while keeping these factors in mind and also considering the position obtaining in the states of Tamil Nadu and Maharashtra, that are implementing a law which was upheld by the Supreme Court, has recommended similar action. It would require passage of a new legislation which would oversee fee regulation but would leave each school enough leeway to convince the prescribed authority about the basis for fee enhancement. This would be in tune with what the Delhi High Court has asked the government to get done in its order of August 2011.

Another contentious feature of the prevailing Delhi School Education Act is the requirement that all schools pay salaries in tune with government scales. The Review Committee felt

that when there is as huge a difference in fees (as high as 200% between the low end and high in schools), it would not be fair to expect all schools to adopt the government scales. In doing so, the tendency to obey only on paper but actually pay less to the teachers would continue.

In the state of Andhra Pradesh, the government orders prescribe that 50% of the fees collected from students would go towards teachers' salaries. That may not work in a place like Delhi but it highlights the fact that salaries need to have some relationship to the fees charged. The Review Committee has addressed this issue by suggesting that the requirement to adopt government scales may be done away with but in no case should the salaries be less than what is paid to contractual teachers engaged by the Delhi Government. However this would not imply that all teachers would be contractual and their security of tenure would need to be assured.

However for teaching non-core subjects, (computer science, art, music, foreign languages, the Review Committee has recommended that the unaided schools may be given the flexibility to engage contractual teachers.

Taken together with the checks and balances that would come into play with a new system for giving financial and physical returns online, engaging auditors from an approved panel, generating and examining the returns on the basis of exception reports using the Institute of Cost and Works Accountants of India (ICWAI), there should be enough flexibility available to the schools to operate independently.

The Review Committee has tried to do justice to the divergent needs and claims of a large cross-section of stakeholders including the Department of Education, school managements, and employees of the schools, parents and children. The Report in 3 Volumes has been prepared in a way that the Government can consider and operationalise the recommendations if found acceptable with no loss of time.

In the past, although there were several reports suggesting changes which would benefit the school education sector, these did not fructify because they entailed a change of law which was never attempted. The Review Committee was extended an opportunity to do this and it is hoped that the Government would set up an implementation schedule to take the suggested modifications of DSEAR '73 forward, a measure which has been long overdue.

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1. Government of India (1966), Report of the Education Commission 1964-66: Education and National Development, Manager of Publications, New Delhi
 2. AIR 1992 SC 1858
 3. AIR 1993 SC 2178
 4. AIR 2003 SC 355
 5. 109 (2003) DLT 489
 6. (2004) 5 SCC 583
 7. (2009) 10 SCC 1
 8. 123 (2005) DLT 89

VOLUME - I
Part - II

REPORT OF THE REVIEW COMMITTEE ON THE DELHI SCHOOL EDUCATION ACT AND RULES, 1973

VOLUME - I Part - II

Chairperson	:	Shailaja Chandra, IAS (retd.), Former Chief Secretary Delhi
Member Secretary	:	Abha Joshi, Deputy Director of Education (retd.) Directorate of Education, GNCT Delhi
Member	:	Manish Kumar Gaur, Assistant Legal Advisor, Department of Law Justice and Legislative Affairs, GNCT Delhi
Nodal Officer	:	Marcel Ekka, Deputy Director of Education, Directorate of Education, GNCT Delhi

Under the aegis of
Directorate of Education
Government of National Capital Territory of Delhi

SECTION - 01

Short Title, Extent and Commencement

This Section provides for the short title, extent and commencement of the Delhi School Education Act, 1973 (DSEAR '73).

Issues Involved

Scope of the Delhi School Education Act and Rules (DSEAR '73) and the Right of Children to Free and Compulsory Education Act'09 (RTE '09).
The scope of DSEAR '73 is to provide for better organisation and development of school education in the Union territory of Delhi and for matters connected therewith and incidental thereto.

The scope of RTE '09 is to provide free and compulsory education to all children of the age of six to fourteen years.

Action Recommended

Scope of the Delhi School Education Act and Rules (DSEAR '73) and the Right of Children to Free and Compulsory Education Act'09 (RTE '09).

Both the Acts have a different approach and scope. There is no repugnancy in the objectives of these two Acts. However, the words "Union Territory" have to be replaced by National Capital Territory.

SECTION - 02

Definitions

This Section deals with the definition of various terms used in the DSEAR '73.

Issues Involved

The Review Committee examined the definition clauses of the DSEAR '73 and the provisions of the RTE '09, also the changed administrative setup of the NCT of Delhi after the coming into force of the Government of National Capital Territory of Delhi Act, 1991. The following matters were taken into consideration:-

Obsolete Definition

- Clause (a) of Section 2 defines the term “Administrator”. In the year 1973, Delhi was a Union territory having an “Administrator” appointed by the President under article 239 of the Constitution of India. However, after coming into force of the Government of National Capital Territory of Delhi Act, 1991, the Union territory of Delhi is known as the National Capital Territory of Delhi and the “Administrator” has been designated as “Lt. Governor” under article 239AA of the Constitution.

Existing Schools in 1973

- The provisions of clause (i) and (j) were inserted in Section 2 of DSEAR '73 with a view to protect existing employees and existing schools on the date of commencement of the DSEAR '73. These clauses have become redundant now and need to be omitted.

Recognised Schools

- As per the RTE '09, no school shall function without having a certificate of recognition. Therefore, the definition “recognised school” as provided under clause (t) of Section 2 of DSEAR '73 becomes redundant.
- The definition of “school” as provided under clause (u) of Section 2 includes pre-primary school. However, in RTE '09, the term “pre-school” has been used, which appears to have a wider operation.

Change in Administrative Setup

- In view of changed administrative set up of the NCT of Delhi, there is a need to insert the term “Government” in the definition.

Action Recommended

Obsolete Definitions

- After the Government of National Capital Territory of Delhi Act, 1991 came into force, the Union territory of Delhi became known as the National Capital Territory of Delhi. The “Administrator” was designated as “Lt. Governor” under article 239AA of the

Constitution. Therefore, there is a need to replace the term “Administrator” with the term “Lt. Governor”.

- In view of the provisions of RTE ‘09, it is proposed to insert the term “elementary education” as defined in the said Act which would include school education until class VIII. There would be no nomenclature like “middle school” which exists in the DSEAR ‘73.

Existing Schools in 1973

- Since provisions of clause (i) and (j) were inserted in the Act with a view to protect existing employees and existing schools on the date of commencement of this Act, (1973) these clauses have become redundant now. Therefore, they are proposed to be omitted.

Recognised Schools

- As per RTE ‘09, no school shall function without having a certificate of recognition. Therefore, the definition of “recognised school” as provided under clause (t) of Section 2 of DSEAR ‘73 has no relevance. This clause may be omitted. Any extensions of time granted for seeking recognition under RTE ‘09 would apply automatically to unrecognised schools. No penalty is applicable until 01.04.2013.
- The definition of “school” as provided under clause (u) of Section 2 includes pre-primary school. However, in RTE ‘09, the term “pre-school” has been used, which appears to have wider application. In order to maintain symmetry in both the Acts, it is proposed that the term “pre-primary” used in this clause may be replaced with the term “pre-school”. Under RTE ‘09 every school has to be recognised, therefore, clause (t) which defines recognised schools is proposed to be omitted and in the definition of school under clause (u) the word “recognised” is proposed to be inserted.
- The word “higher secondary” needs to be replaced with the words “senior secondary” in view of the changed nomenclature.

Change in Administrative Setup of Governance

- After the commencement of the Government of National Capital Territory of Delhi Act, 1991, the Union Territory of Delhi has been given the special status of National Capital of Territory of Delhi. It is proposed to insert the definition of the term Government as under:

“Government” means the Government of the National Capital Territory of Delhi”.

Separate Directors of Education for Elementary and Senior School Education

- Apart from posting more senior IAS officers to function as Directors of Education both in GNCT and in MCD, the number of Directorates also needs to be increased. During discussion a suggestion was made that there ought to be two Directors — one looking after Administration and one looking after academics. Another suggestion was to have one Director of Education for Government Schools exclusively and a separate Director for unaided private schools. Both these measures would result in the bifurcation of the divisions that deal with important matters like litigation which is avoidable as matters concerning the interpretation of the Act should be dealt with at one place. Administrative accountability would become defused.
- The position obtaining in some state governments was ascertained by the Review Committee and although the situation in Delhi is quite different, the number of schools

in Delhi warrants more focused oversight. The Committee felt that the best way to improve supervision would be to have separate Directorates for Elementary Education and for Secondary/Senior Secondary education. That is the position obtaining in all state governments.

- Since Delhi is a compact urban area, the Director of Primary Education is under the local bodies (MCD and NDMC.) The idea of having a separate Directorate for Elementary Education would be very relevant now with the coming into force of RTE '09 as increased responsibility would devolve on overseeing the implementation of the Act and in particular the admission of EWS children in private unaided schools. In case the suggestion to include pre-school (Nursery/KG) as a precursor of elementary Education is accepted as a matter of policy, the level of supervision would increase manifold. A commensurate number of Education Officers and staff would need to be assigned and they would need to be supported by an MIS system as adopted by the National Rural Health Mission – a system that is working well.
- This has been dealt with both in the preamble and by proposing an amendment in the definition of the Director provided under clause (g) of the DSEAR '73.

SECTION - 03

Power of Administrator to Regulate Education in Schools

RULE-1-43

This Section empowers the Lt. Governor to regulate education in Delhi and thus it encompasses almost all aspects of imparting education.

Issues Involved

Anomalies in the DSEAR '73 and RTE '09

Some Rules of DSEAR '73 are in conflict with the provisions of RTE '09. These are:–

- Under RTE '09, the number of working days for classes from V to VIII is 220. Under the DSEAR '73 it is 210 working days.
- Under Section 17 of RTE '09, no child is to be subjected to physical or mental harassment. Under DSEAR '73 [Rule 37(4)] corporal punishment (though this was banned by an administrative order after the directions of High Court) is expressly provided for. This has to be removed completely.
- Under Section 16 of RTE '09 no child is to be expelled from the school until the completion of elementary education. Under DSEAR '73, if a child has attained 14 years, a number of disciplinary measures can be taken against the pupil under Rule 37.
- In the classification of schools under DSEAR '73 pre-primary refers to one year and two year duration classes held prior to class I. Under RTE '09 everything comes under the nomenclature “pre-school”.
- RTE '09 deals with children up to elementary level while DSEAR '73 deals with children up to Senior Secondary level.

Apprehensions and Complaints put forward by school representatives

- There was a persistent complaint from representatives of several organisations and Principals of schools who attended a meeting convened by the Director SCERT, that respect for authority and discipline amongst children have been eroded as a result of the provisions of Section 16 and Section 17 of RTE '09.
- The provisions of RTE '09 have virtually barred any kind of admonition, however mild, which has made some children impudent. They often indulge in activities that affect the well-being of other children in the school. The Continuous and Comprehensive Evaluation (CCE) system envisaged under RTE is a utopian concept when many schools are still unequipped to provide all the facilities needed for all-round development of a child. In effect CCE cannot be implemented uniformly while the advantages of instilling discipline have been abandoned overnight. The result is that teachers prefer to do nothing, and their apathy is affecting the school atmosphere adversely.

- It was also alleged that an atmosphere of fault finding has been generated among parents. Upbraiding indulged in by some NGOs and issue of notices by DCPCR has further emboldened parents and children to challenge authority. This was affecting even those children who are otherwise disciplined. This sudden change of ethos and expectations was militating against an atmosphere where good conduct, diligence and high performance were once rewarded.
- As per information received from DCPCR they have taken action in 12,000 (approximately.) Out of these 10985 dealt with denial of admissions to children and 149 denial of admission under EWS quota. This is a very high record compared to anywhere else in the country. The Associations, Principals and Teachers uniformly stated that the issue of show-cause notices was creating a fear psychosis and having an adverse effect on discipline and orderliness.

Necessity for a Student Counsellor in Schools.

- In a city like Delhi, most families belong to the “nuclear” cohorts with both parents working. Under RTE ‘09, there is a complete ban on any kind of “harassment” to children. Therefore, there is a need for every school to have a counsellor to guide the children in their personal and social interactions so that they receive timely guidance. Further as most parents are keen on career placement for their children a counselor would be able to provide essential know-how about career option based on the child’s interests and aptitude.

Special Education Teachers

- According to the RTE ‘09 the right to free and compulsory education is available to a child suffering from disability. Hence, enabling provisions for overseeing the care of children with disabilities is required to be made through the appointment of Special Education teachers.

Suggestions made to the Review Committee

- A specific suggestion came from Prof. Venita Kaul, Director, Centre for Early Childhood Education and Development, Ambedkar University, Delhi, Sector-09, Dwarka, New Delhi-110075, who wrote to the Chairperson of the Review Committee giving several reasons for including pre-school education for children for 4-6 years while planning for school education. She was formerly with the World Bank’s country office dealing with school education.
- Dr. Kaul’s advice is based upon child development theory and global experience according to which children, especially first generation learners, require a sound school readiness programme prior to joining grade-1. Many children who come into Government schools and into private schools under EWS quota do not have the required enabling environment at home it is all the more necessary in their case. In the absence of this, data shows that children enter grade 1 and a large percentage drop out by Grade 2. Dr. Kaul has referred to data on about 30000 children across 8 States which had shown participation in preschool education leads to 15-20 percent better retention in the primary grades and also impacts on learning capability. On the basis of global research it has also been found that children between the ages of four and six years become ready for a more structured, play based learning environment if they have had the benefit of attending pre-school. Children from disadvantaged communities in particular, require to be exposed to a school readiness programme that prepares them for regular school and builds confidence in the child.

- Professor Kaul's note is annexed at Annexure-9 in Volume-III.

Action Recommended

Anomalies in the DSEAR '73 and RTE '09

Uniformity of working days

- To bring DSEAR '73 in conformity with RTE '09, Rule 32 needs to be amended to enhance the number of working days to 220.

Discipline and Code of Conduct for Pupil

- Rule 37(4) which provides for corporal punishment needs to be omitted. Measures for maintaining discipline u/r 37 needs to exclude children up to elementary level. (Age 14 years.)
- Rule 36 which lists forbidden practices may be retitled as Code of Conduct for students because it deals with spitting, disfiguring school property, smoking, gambling, using intoxicants, rowdyism, indulging in violence, casteism and communalism which are serious acts of misconduct. The punitive action for these delinquencies includes fine, expulsion, rustication which should remain.
- To deal with cases of indiscipline in schools, a committee may be constituted in every school. The members of the Committee may consist of :-

- (1) Head of School
- (2) Vice President of the PTA
- (3) PGT to be nominated by the Head of School
- (4) Class Teacher/Physical Education Teacher
- (5) Counsellor of the School

The Terms of Reference of the Committee may include –

- Ascertaining cause of deviant behaviour on the part of child
- Dealing with recurring complaints about a child
- Assisting the school to identify whether the child was suffering from any learning disability.
- Counselling the child and his/her parents.
- Provision for such a committee may be included as one of the sub-rules of Rule 37.

Primary and Pre-Primary School

- In the classification of schools the word “Pre-primary” may be replaced by “Pre-school” in Rule 2(h) to bring about uniformity in the two Acts.

School Readiness

- Section 11 of RTE '09 provides as follows

“Appropriate Government to provide for pre-school education. - With a view to prepare children above the age of three years for elementary education and to provide early childhood care and education for all children until they complete the age of six years,

the appropriate Government may make necessary arrangements for providing free pre-school education for such children.”

National Policy on Education, ECCE and Pre-School Education

- The National Policy on Education (1986) has acknowledged Early Childhood Care and Education (ECCE) for children below 6 years to be a significant input for primary education, both as a feeder program for school preparation and as a support program for girls' education. It specified policy guidelines for the related curriculum and its implementation.
- Early Childhood Care and Education (ECCE) refers to education and care of children below 6 years. It includes provision of education, nutrition and health care. Within the ECCE stages two sub stages are identified :- (a) an Early Stimulation stage for children 3 years and below who require home based programmes, and (b) an Early Childhood Education stage for children between 3 to 6 years through play based preschool/pre primary education.
- School readiness does not mean starting to teach reading, writing and numeracy prior to Grade-I. It refers instead to providing children with an environment and materials that help to nurture the child provide a forum for social interaction and expression.
- It is proposed that preschool education for 4-6 years old children be made an integral part of primary education. This step is in the interest of the child. In a large number of states, pre-school continues to be perceived as a nutrition programme. As a result, in the absence of an effective provision, a large number of children from under privileged communities are missing out on an opportunity for preschool education in these critical years, which is likely to place them at risk of dropping out or under performing in school. Some state governments like Nagaland, Assam, Jammu & Kashmir, at their own initiative, have added preschool classes to the primary schools in view of this spiralling community demand.
- In the absence of preschools in government schools, parents with even meagre incomes are sending their 4 years old children to play schools at the preschool stage.

The Review Committee therefore felt that “pre-school” classes should be made an integral part of the school education system. The RTE '09 Act has also suggested provision of free pre-schools education to children above the age of three.

Nursery Admission

- The High Court of Delhi vide its order dated 07.03.07 in the matter of Social Jurists Vs. Union of India and Others constituted a Committee (Ganguly Committee) to examine whether the pre-primary school stage should be of only one year's duration and what should be the cut off age for admission to pre-primary class. The Ganguly Committee give its recommendation which were more or less accepted by the Government of Delhi. In the light of what was agreed before the High Court, the Government had made the “The Recognised Schools (Admission Procedure for pre-primary class) Order 2007”^{*} in terms of guidelines in exercise of powers conferred under Section 3 (i) of Delhi School Education Act, 1973 and Rules thereunder, (Admission Order).

This order of Delhi High Court and “the Recognised Schools (Admission Procedure for pre-primary class) Order 2007” was challenged before the Supreme Court by Forum for promotion of Education Vs Social Jurist and others (2007)^{*} wherein the Court held that it would be sufficient if the admission criteria adopted by the schools are sent to

the Director of Education. There shall be no requirement for seeking prior approval of the Director of Education for adopting the admission criteria.

In view of this position the Review Committee has not commented on the nursery school admission matter. However the present situation calls for setting a few uniform and non-negotiable criteria for Nursery/Pre-School admission to safeguard against the alleged malpractices that are reported to be taking place. Moreover as this matter was outside the term of reference of the Committee no further observations are made.

Policy Decision Needed on Pre-school with Consequential Changes

Since the matter of pre-school forming a part of school education involves a major policy issue, a decision has to be taken by the Government. However, on a practical note if the Review Committee's suggestion is accepted, a rule-of-thumb may be laid down that any school that runs Nursery, KG, Play-school classes where admission thereto automatically secures entry to Class I of the school would be covered under the provisions of RTE '09 and the new DSEAR '73 when enacted. Where the child is only attending a play school that does not lead to automatic entry to the Class I of that school or where the school terminates teaching before Class I, the school may be kept out of the ambit of coverage under both Acts.

In case this approach is agreed to consequential changes would require to be made in Rule 4 of the DSEAR '73 in respect of classification of Schools so as to include pre-primary education within primary education by substituting sub-clause (i) and (ii) with the following clause;

“(i) primary schools, that is to say, schools imparting primary and pre-primary stage of education;”

Since, the Government has to take an appropriate policy decision in this regard; the above amendment has not been included in Volume-II of the Report. The above clause can be used if a policy decision to include pre-school education is taken.

Special Education Teachers

- The children with disabilities need special attention and facilities. The provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 requires that the Government establishes educational institutions for persons with disabilities. Children with disabilities have been added in the definition of ‘Child belonging to the Disadvantaged Category’ within the meaning of Section 2(d) of the RTE '09 and they are entitled to be considered for admission and free ship in unaided recognized private schools to the extent of 25%. This essentially requires that the unaided recognized private schools must have both physical and academic infrastructure to provide education to children with disabilities. The Hon'ble Delhi High Court in *Social Jurist, A Civil Rights Group v. Govt. of NCT of Delhi & Ors (2009)* directed the state and local body run schools to have 2 Special Educators in each school. On the same analogy such directions need to be extended to all unaided and aided private schools of Delhi. Therefore an enabling provision has been made in the Rule 43A for appointment of special education teachers in private schools.

School Counsellors

- Counselling is a collaborative process in which the counsellor or psychologist facilitates the expansion of the pupil's view of life, enlarges his repertoire of coping resources and enables him to make choices for change in himself, the situation and the environment,

* CWP 12490 of 2006

* SLP No. 12774/2007

without destructive consequences to self or others. The process is directed by the application of specialised skills and strategies in a therapeutic relationship with the pupil. The goal of intervention is to help pupils manage their difficulties effectively so that their total development would not be impeded. School counsellors work with students, parents or carers and teachers in a variety of ways.

Their work includes:

- counselling students
- assisting parents or carers to make informed decisions about their child's education
- assessing students' learning and behaviour
- assisting schools to identify and address disabilities that affect students' learning
- liaising with other agencies concerned with the well-being of students.
- A school counsellor is a member of schools' student welfare and learning support teams. With the agreement of parents or carers, school counsellors normally pass on to teachers, information that will assist the teachers to better meet the needs of their students. A student's reasons for seeing a school counsellor may include worrying about school work, conflict with friends, being in trouble at school or just feeling "down". If a counsellor is available in the school, parents may seek advice from school counsellors about their child's school progress, educational options, including access to special education services, behaviour and for information about help available from other agencies. This will help the schools to deal with students in more holistic manner.
- The Review Committee suggests that every school up to elementary level should have a full time Counsellor in the school and a school at the secondary or senior secondary level should have two counsellors one for elementary and other for senior classes. Every student should be given counselling through specialised Counsellors as and when need arises. A provision has been made in Rule 37 for engagement of Counsellor in every school.

SECTION - 04 Recognition of Schools

RULE 44-58

This Section deals with the grant of recognition to schools.

Issues Involved

Recognition made Mandatory

- The provision of ‘grant of recognition to schools’ has been a provision under DSEAR ‘73 since inception. However for various reasons a large number of schools have remained outside the circumference of recognition. With the coming into force of the RTE ‘09, things have changed. Recognition of all schools up to elementary level is now not only mandatory but there is a penalty of Rs.10, 000 per day for continuing without recognition. Three years time has been given under RTE ‘09 for unrecognised schools to acquire recognition if they are imparting elementary education. (Currently that date is 01.04.2013.) Today, according to the figure quoted by the Association of Unrecognised Schools there are more than 4000 schools in the primary sector which are running without recognition. Some schools that are recognised up to primary level are unable to move to middle school level for want of recognition.

Fate of unrecognized schools under RTE ‘09

- The Association of unrecognised schools had represented before the Review Committee that their results are in fact better than MCD and even Government schools and small children need neighbourhood schools. The norms set out for recognition refer to the norms set out by DDA for being in possession of land of a certain dimension which is not only not feasible but can never be attained on a wide scale in a city which has such a high density of population and so little vacant land. Since the fundamental norms of land stipulated under the master plan or under Executive orders remains unchanged, all other space requirements listed under the RTE ‘09 remain a wish list. This needs to be seen in the overall context of city schools which are distinguishable from rural schools. Also the implications of perhaps closing down hundreds of schools leaving parents and children in the lurch. Government can not also shepherd all such children into school which are often packed to capacity or have other infrastructural problems.

Need for survey of unrecognised primary school by MCD

- The Review Committee had a sitting with the authorised representative of the Delhi Development Authority and with the representative of the Municipal Corporation. On the intervention of the Commissioner MCD data was made available about unrecognised schools in Delhi. The Review Committee was also informed that about 90% of the unrecognised schools fall in the primary sector which comes under the jurisdiction of MCD which oversees primary education.
- Review Committee requested Director (Education), MCD to send information pertaining

to private schools under its jurisdiction on various points as discussed in the meeting dated 12.08.11. (Placed at Annexure Colly-6 in Volume-III) In response to it Director (Education), MCD send a survey report (Placed at Annexure - 3 in Volume-III) according to which there were 1593 unrecognised schools in Delhi.

- The Commissioner (MCD) was requested vide letter dated 14.09.2011 (Annexed as Annexure-4 in Volume-III) to get a quick survey carried out to ascertain the number of unrecognised schools that would qualify for recognition as per RTE '09 norms. The response of MCD dated 26.12.2011 placed at Annexure-5 in Volume-III shows that a sample survey was done in respect of 257 unrecognised schools out of nearly 1500 such schools. Its finding was that in case land norms as specified in Master Plan 2021 which effect from 07.02.2007, stipulates 800 sq. meters land for a primary school, are applied than a mere 16% would qualify for recognition. However, if MCD applies old land norms of 200 sq. meters then 61% of unrecognised schools would qualify for recognition.
- It was stated before the Review Committee by the MCD Director of Education that no representations had been made to the MCD by unrecognised schools requesting grant of recognition. It was also noted that such schools were mostly operating from residential premises. RTE '09¹ requires that each school should have independent rooms for the teachers, for a store, possess a playground, have kitchen facilities where mid-day meals are served and separate toilets for boys and girls. MCD was unable to comment on how many of the 4000² odd schools would possess a substantial portion of these facilities and what proportion may be bereft of even the basic facilities mentioned above. The Review Committee requested the Commissioner MCD to mount at least a Fact-Finding Survey which he agreed to do. The result was given to the Review Committee and shows that 16 % would qualify as per MPD 2021 and 64 % would qualify if the pre-2007 norms were used. MCD was asked to apply the RTE '09 norm which except for provision of playgrounds is achievable but the responses show that the Corporation is not prepared to even consider the possibility of doing such an exercise. It is imperative that as many schools as possible are brought under the fold of recognition. Plans to close down those schools which have poor facilities and where there can be no expectation of improvement have to be initiated right from now. RTE '09 deadline is April 2013 and there should be advance preparation done by MCD under whose jurisdiction the maximum number of primary schools function. RTE '09 Rules which have issued in November 2011 place the onus the schools which is in order, but there is a necessity also to be proactive about ascertaining the extent of shortcomings as per RTE requirements so that there is a plan of action available for implementation.

Land and Space Norms

- There is an understanding in MCD that "recognition" cannot be given unless DDA's lands norms extracted below are met. DDA operates the Master Plan under the Delhi Development Authority Act, 1957 and the land requirements have been specified for those seeking land for setting up new schools. The Master Plan does not deal with schools that are running without recognition. DSEAR '73 also does not mention land or space by square foot anywhere. On enquiry the Review Committee came to know

¹ Requirement under RTE

i) Office cum store for head teacher

ii) A kitchen for mid day meal

iii) Separate toilet for boys and girls

iv) One room for library

2. As per figure quoted by the Association of the Unrecognized Schools before the Review Committee

that the land requirements specified by the Directorate of Education were extrapolated from the orders of the CBSE that had specified 2000 square metres for secondary schools. From this, in the year 2004 an order was issued by the Directorate of Education specifying the land norms required for smaller schools, i.e. middle schools. These norms which have become such an insurmountable hurdle do not have any basis in any statute and are in fact executive orders which are open to change at any time. This needs to be considered keeping in mind the requirements of RTE '09 in which the basic requirements needed to operate an elementary level school have been given.

Level of School	Land/Space norm as prescribed under the order dated 12.01.04 of the LG and issued by the Directorate of Education.
Middle (Elementary)	1000 sq. mtrs.
Secondary	2000 sq. mtrs.
Senior Secondary with two streams	3000 sq. mtrs.
Senior Secondary with 3 or more streams	4000 sq. mtrs.

Commercial use of School Premises

- The Review Committee was informed by officials from Education Department that many complaints are received regarding commercial use of school premises by the managements. (Opening book shops or uniform shops inside the school premises). On the other hand school representatives expressed before the Review Committee that this is in the interest of parents and children.

Opening of Education field for Companies registered under Section 25 of the Companies Act.

- Under the existing provisions of DSEAR '73 only Societies registered under Societies Registration Act 1860 or a public trust constituted under any law can set up schools. However, in the last decade or so with economic growth, there are other players willing to enter the education sector but due to the absence of an enabling provision, they have not been able to join. It was suggested to the Review Committee that Companies registered under Section 25 of the Companies Act, 1956 should also be allowed to establish new schools in Delhi. The argument given in support was that companies registered under Section 25 of the Act are 'Non-Profit' or 'No Profit-No Loss' companies. These terms signify that such companies cannot distribute the profits earned in the form of dividends to its members and the income / profit earned has to be applied for furtherance of the objects for which the Company has been formed. By allowing this there would be an addition to the availability of the schools and the operation of the Company Law would bring transparency and efficiency.

Suggestions Regarding Use of School Premises for Skill Learning

- At present schools are prohibited under Rule 50(ix) to use the school premises for any commercial purpose other than running a school. This leads to a situation where valuable space which can be used for preparing children to become useful and self employable citizens is not used efficiently. Under the CBSE system vocational courses are being run but there are many other areas which could lead to self-empowerment if children above 15 years could acquire a certificate qualification run by accredited agencies.

Suggestion Regarding Second Shift in Existing Schools

- According to the mandate of RTE '09, the State Government has to ensure that every child should get elementary education in the neighbourhood. The Government already runs Second Shift in the evening in many of its schools. To increase the intake capacity in the elementary education classes, the Government may explore the possibility of allowing the private recognised schools to run second shift in the evening in schools that have substantial vacant space lying unutilised by existing pupils after school hours subject to guidelines and the adoption of a system and with the prior approval of the PTA and the Government.

Provisions Relating to Essentiality Certificate

- For opening a new school in Delhi, under Rule 44 of the DSEAR '73, the society needs to obtain an "Essentiality Certificate" (EC) from the Directorate of Education. An EC is issued to the proposed school on the basis of the inquiries conducted by the Directorate of Education in respect of requirement of a school in the particular zone. It was stipulated to avoid bunching of schools in a particular Zone. It was represented before the Review Committee that this provision contained in Rule 44 needs a review.

Building Completion Certificate by MCD/DDA

- It was pointed out to the Review Committee that there is a problem in obtaining the completion certificate from the MCD/ DDA in respect of new schools which is resulting in delay in opening of school. It may be explored as to whether this condition of obtaining completion certificate from MCD/ DDA may be done away with and a certificate from an empanelled architect of MCD may be sufficient.

Action Recommended

Recognition made Mandatory - Need to Relax Norms for Recognition

- The Review Committee is of the opinion that as long as the basic requirements spelt out by RTE '09 are met and the norms for teacher's qualifications are fulfilled maximum number of schools should be considered for recognition. A study done by PRATHAM an NGO in the Education sector has revealed that the educational outcomes of private schools running in one of the most disadvantaged wards of the city Nandnagri were superior to that of the MCD schools and even the Delhi Government schools (copy of the study placed as Annexure-10 in Volume-III). Such surveys need to be mounted continuously covering many more wards so that a picture of actual learning outcomes is available for corrective action to be taken.
- It would be in the interest of society at large, particularly in less affluent wards of the city if private unrecognised schools were considered for recognition provided they meet the requirements set out in RTE '09. Perhaps most would fail on account of an absence of a playground and kitchen facilities as a majority of such schools are operating from residential houses and the question of providing playgrounds and kitchens for preparing the midday meal may not be feasible. Therefore on the lines of what was decided in the case of DSEAR '73 when it was first enacted, when schools in the walled city were allowed to use community spaces to overcome the shortage of playgrounds, the Rules under RTE '09 may allow similar relaxation for a specified period. Tie-up arrangement for using municipal playgrounds or sports playgrounds need to be worked out so that children get a chance to play in a safe environment and the onus for showing the tie-up with a playground facility as well as arrangements

to transport the children to-and-fro lies with the school. It is possible that through this measure more schools may get recognition. Mid-day meals in Delhi are in any case not being prepared in the schools and this is an outsourced activity which has to continue because of urban settings.

- The MPD 2021 issue requires urgent attention. Neither the DDA representative nor MCD were able to view the situation in the light of RTE requirements despite these requirements being very liberal. Grant of Recognition as per RTE '09 (and not as per the Master Plan) may be considered for those schools that have been in existence and running classes upto Class VIII for a minimum of six years and meet the RTE '09 requirements if space, teacher : pupil ratio and teacher's qualifications requirements.

Redundant Sub Section

- Sub Section (6) of Section 4 protects existing schools (1973) that fulfil the norms of recognition. Since this provision was made for the express purpose of giving recognition to the existing schools on the date the Act came into force, the provision is now redundant and needs to be omitted.

Grant of Recognition in Time Bound Manner

- The DSEAR '73 actually specifies a four month limit by which time applications for recognition have to be considered and disposed of. However it has been noticed that applications remain pending for several months at a time with the result that the existence of a law has no meaning. Since this has been alluded to in detail in the RTE RULES 2011 the Review Committee is not making any recommendations. It would however be necessary for district based committees to consider all applications for recognition of schools in a time bound manner and prior to that MCD and the Education Directorate would need to visit every school up to elementary level to start with to determine the extent to which they need to fill the gaps that have been specified under RTE '09. The quick survey results given by MCD are a starting point and should be taken forward a district wise plan which would expedite the process. The interpretation which MCD appears to be adopting that in the face of the Master Plan land requirements, space requirements specified by RTE '09 have no meaning does not appear to be correct and Government has to take a view soon to avoid confusion on this score.

Recognition of Nursery Schools

- The RTE does not stipulates the minimum age of admission in Class 1st. The DSEAR '73 describes the minimum age of admission to class 1st as 5 years. In RTE '09 Section 11 as well as the provision to Section 12(1) (c) preschool admission has been covered. Section 11 refers to the preparation of children above the age of 3 years for elementary education and to provide for early childhood care and education for all children until they complete the age of 6 years. This refers to schools that are running a preschool Section in conjunction with an elementary school and does not refer to schools which are providing pre-school facilities exclusively. The amendment has been made accordingly in the Rule 4.

Allowing Skill based learning to be imparted in the School Premises

- If the school premises could be allowed to be used for such courses for children above 15 years, they would benefit greatly. By allowing vocational courses for skill development under clause (ix) of Rule 50, the possibility could be opened up in schools that clearly have a large amount of space that goes unutilised after school hours. To administer this and to ensure that regular students are not disturbed or deprived of facilities

through this measure, specific conditions can be stipulated. An enabling provision has been made in the proposed clause (ix) of Rule 50 of DSEAR '73.

Second Shift

- To make available appropriate numbers of elementary schools in the neighbourhood areas, the Government may consider allowing opening of elementary schools to run in second shift in existing recognised private schools subject to their following specified guiding principles. This would not only increase 25% more seats in the private recognised schools in the EWS category but also enable valuable space to be used fruitfully-provided the measure does not affect the facilities given to the morning shift children adversely. A provision has to be made under Sub-Rule (3) of Rule 45 of the DSEAR '73 on the following lines, -

“The appropriate authority may, subject to such norms as may be specified by it, allow opening of new classes up to elementary level, in the second shift of recognised school.”

- Since, this proposal requires further elaborations of guidelines, factors etc., the enabling provision has not been made in Volume –II and is a matter for Government to take a view. If it is considered the non-negotiable requirements should be: -
 - Approval by the General Body of the PTA of the existing school.
 - No curtailment of facilities/ space/ school norms for existing pupils/ morning shift classes.
 - Provisions of new fully qualified teachers and non-dependence on any existing teacher.
 - Undertaking to reduce fees as determined by the Fee Regulation Committee as the earnings would increase.

Essentiality Certificate

- The Review Committee examined the provisions of Rule 44 of the DSEAR '73. This provision was made initially to enable the Directorate to assess the requirement of schools in a particular zone before opening of the new school as the land was allotted to the societies to run a school through DDA. Now, there is a substantive change in the policy of DDA in allotment of land or some societies may not require land allotment from DDA or other Government agencies. There is already scarcity of nazul land in Delhi. By restricting the supply of schools in an area, the Directorate restricts the role of the market in assessing the demand for school education. Within 3 years of obtaining the certificate, the construction of the school has to commence, failing which the society has to apply for renewal. Even after issue of Essentiality Certificate under Rule 44, the society has to again apply for recognition of its school under Rule 49 of the DSEAR '73. There is no such provision under the RTE '09; it stipulates that no school shall run without recognition. Therefore, in the opinion of the Review Committee the provision of Essentiality Certificate contained in Rule 44 may be deleted and it should be left open to the market to decide the requirement of schools in a particular area.

Building Completion Certificate from MCD/DDA

- In Delhi, the development of land is done in accordance with the Master Plan issued by the DDA from time to time. The Master Plan provides a detailed framework for better planning for the whole of Delhi including land use. Based on the Master Plan

the MCD sanctions the building plans for every kind of regular construction in Delhi. Therefore, for opening a new school in Delhi, the building plan has to be approved by the DDA/MCD in their respective areas. As per section 343 of the Delhi Municipal Corporation Act, 1957 no person shall erect or re-erect or make alteration or cause the same to be done without first obtaining a separate building permit for each such building from the MCD. It is in the interest of the public to get the Building Plans sanctioned to ensure that the building has adequate structural strength and has provision for light, ventilation, hygienic conditions and conforms to the Zoning regulations. Any construction raised without sanction is liable for demolition under section 343 and 344 of D.M.C. Act and owner/builder can also face regular prosecutions under section 345A read with section 466A of the Act. Therefore dispensing with the need for sanction of building plans and other measure will not be legally valid. However it is necessary to work out a time-bound system for grants of approvals based on certification of private licensed architects empanelled by MCD.

Related Recommendations

- **Running shops within school premises:** It is well known that schools prescribe a specific uniform and insist that blazers/ jerseys and other apparel be purchased from the school shop. The same applies to text books and stationary. Sometimes this becomes a monopoly with the connivance of the school, forcing parents to purchase only from one source. While the need to provide convenient facilities for purchase of school uniforms, books & stationery cannot be overlooked, if permitted in a regular way this can become a means of cutting into space and commercializing it. The convenience is primarily needed only at the beginning of the session. Therefore, there is no need to regularise this activity but temporary sheds may be permitted to be put up for sale of books/uniforms and stationery for one month at the beginning of each academic session. Continuance of this activity beyond one month may invite penalty against the school. This can be done through an administrative order.
- **Fire Safety:** It is proposed to insert a new clause (xix) in Rule 51 to make it mandatory for the school to provide fire safety measures and a certificate from the Fire Officer of Delhi fire service that the fire safety measures in the school are adequate.
- **Section 25 of Companies Act:** The Review Committee was informed that in Haryana, companies registered under Section 25 are allowed to open schools. The Review Committee is of the view that the Government may consider asking a suitable group of experts in Company Law and a group of Educationists to prepare a paper on this. The Committee feels that prima-facie it would be a good idea to promote an alternative which precludes commercialisation but brings in private resources. Giving permission to companies registered under Section 25 of the Companies Act to open up schools, could lead to the following advantages: -
 - Presently many private schools are being run as family conglomerates. Almost all the key posts in the Management are held by family members and a large part of the income from the school goes back to the concerned family. If Companies are allowed to venture into the education sector, the possibility of exploiting employees would be reduced because a company does not serve the interests of a single person/ family.
 - Another positive aspect would be promotion of greater transparency in the accounts because of tight monitoring under the Company Law.
 - It would reduce the gap between demand and supply and promote competition. However, the schools would have to abide by the requirements of the new School Education Act and RTE '09.

- The Review Committee has not included this suggestion in the amendment to the Act/ Rules as it is a matter of policy. A special Bill can be introduced if the overall Government policy accepts such an alternative. The Review Committee however suggests that the possibility of allowing companies registered u/s 25 to establish schools in Delhi may be explored by the Government and a policy decision may be taken in this regard.

SECTION - 05

Scheme of Management

RULE - 59

Scheme of Management is one of the key provision that lays down the manner in which a society manages a school through the Manager.

Issues Involved

Managing Committee

- Rule 59 of the existing Act lays down the constitution of Managing Committee of a private (unaided) and private (aided) school which has a major role in overall administration of school. But now u/s 21 of RTE '09 and the Rules there under there is a provision for constitution of a School Managing Committee in every Government aided school and its major role is to monitor the functioning of school and monitor the utilisation of grants etc. Although the functions of the two are quite different, yet similarity in the name of the two committees may prove to be confusing³.
- Under Rule 59 DSEAR '73 there is only one parent member in the 21 member committee of an unaided school. Moreover, it is often alleged that this parent member is nominated by the school and not elected by the PTA. It is also alleged that parents of EWS children who are admitted against free seats, do not get any representation in the Managing Committee and hence their interests are not safe guarded.
- The Managing Committee of an unaided or aided school is managed through a Manager for whom no qualification is prescribed. The Manager should be an educated and experienced person with a broad vision. In fact under certain provisions it is specifically mentioned that the Manager would be a member of the Committee (for e.g. in the disciplinary committee under rule 118).

This necessitates that the Manager should have adequate administrative experience of running educational institutions. In the absence of any qualification it is often observed that the academic atmosphere of the school is adversely affected because of petty squabbles between the Manager and the employees.

Ragging

- Ragging is a menace which has drawn attention even of the Apex Court which has

3. As per clause (n) of Section 2 of the DSEAR '73, the managing committee is entrusted with the management of school. Further as per sub-Rule (2) of Rule 59 of DSEAR '73, the managing committee has responsibilities of appointments, disciplinary action and control of staff and responsible for any financial irregularity and irregular procedure, if adopted. This is proposed to be changed by the term "Managing body".

Under Section 21 of the RTE '09, a School Management Committee is provided for Government schools and aided schools to monitor the functioning of school and utilisation of grants by the school. The School Management Committee is a group of parents and public persons which has to monitor the implementation of the provisions of the RTE '09 in the Government and aided schools. In aided schools, where both the Committee and Managing body would act, the Committee under RTE '09 would act as a monitoring platform, for the managing body, to ensure that the managing body does not violate the provisions of the RTE '09

taken a serious view of this matter. There are some private schools which provide hostel accommodation. It has to be the sole responsibility of school management to ensure that no incident of ragging takes place there.

Minority Educational Institutions

- Many Societies submit their Scheme of Management claiming to have a minority status. Qualifying for minority status as an educational institution and the extent to which the DSEAR '73 would apply needs elaboration as has already been clarified by the courts. This needs to be incorporated in the DSEAR '73.

Action Recommended

Managing Committee

- The Review Committee considered the provisions of the Section 21 of the RTE '09 and Rule 3 and 4 of the Delhi RTE '09 Rules, 2011 and found that the role of the Managing Committee under the DSEAR '73 relates to control over the appointments, disciplinary action, and staff. This Managing Committee is responsible for running the school in accordance with the provisions of the DSEAR '73.

On the other hand the School Management Committee provided under the RTE '09 is responsible for monitoring the working of the school and utilisation of grants received from the Government and local authority. The provision for constitution of the School Management Committee is for the purposes of monitoring the affairs of school to effectively implement the provisions of RTE '09 in the Government and Aided Schools. As such there is no conflict between the powers and scope of working of these two committees. However, to avoid confusion between the Managing Committee provided under Rule 59 of DSEAR '73 and the School Managing Committee provided under Section 21 of RTE '09 it is suggested that the Managing Committee under Rule 59 be re-named as "Managing Body".

- Instead of one parent member, there may be four parent members in the Managing Body out of which two may be parents of EWS children admitted against free seats.
- Qualifications of the Manager may be as prescribed by the Government. The Review Committee felt that the minimum requirement should be graduation with at least 5 years administrative experience of working as a Manager in any institution or organisation employing at least 20 professional staff in schools with an enrolment greater than 800 children. (Not blue-collar workers).

Ragging

- The responsibility of ensuring that no incident of ragging takes place (as defined by the Supreme Court) should be of the Head of School and this has been mentioned in Rule 59 (2) (h).

Minority Schools

- The scheme of management is applicable to both minority as well as non-minority schools. The Review Committee looked into the Guidelines issued by the National Commission of Minority Educational Institutions for identifying the minority educational institutions. The Guidelines have specified the criteria for identifying the minority educational institutions. Adopting those guidelines, any school which applies for recognition as a minority institutions/school should show that, -

- (i) The educational institutional is established by members of the minority community;
 - (ii) The educational institutional is established for the benefit of minority community; and
 - (iii) The educational institutional is administered by the minority community.
- After the scheme of the management is approved the school is free to run the same as a minority educational institution. The past experience shows that in respect of unaided minority schools, the Directorate does not participate in the selection of the teachers/staff or in their disciplinary matters. However in case of aided minority schools (out of 215 aided schools nearly 70 schools possess minority status) there are constant complaints which include :
 - (i) Irregularities in appointment and promotion of teachers and staff.
 - (ii) Initiating disciplinary action unfairly against employees.

These complaints occur in respect of non-minority schools too but minority schools claim to have immunity from any sort of intercession.

- On behalf of the minority schools it is stated that they do not require any prior or post approval for making appointments or taking disciplinary action. The Directorate's officers admit that they have no say in the process of selection of staff including teachers. They merely act as advisors under Rule 96(3). However in two judgment of Supreme Court (P.A. Inamdar Vs State of Maharashtra 2005) the right of minority educational institutions has been held to be subject to regulatory powers of the state for maintaining and facilitating the excellence of educational standards. The court observed that the State can regulate the service condition of the employees of minority educational institutions to ensure quality of education. In the case of St. Xavier's College Society Vs State of Gujarat 1974 the Supreme Court has observed that the true meaning of the right to administer is that the right to administer is not the right to maladministration. Due to these observations the Director's nominee while he may not participate in the voting or selection of the candidate does have the responsibility to point out an irregularity or a transgression of administrative requirements at the meeting which ought to be done in writing. A written comment would be useful in case the matter goes to the Court.

The Review Committee felt that the best way would be for the Directorate to give written guidelines indicating what should be minuted by the DE's nominees in case any transgression comes to notice. This would reduce the chances of these matters being agitated before the courts. The Review Committee suggests that the officers should be given training to handle this sensitive subject as the nominees are not to sit as helpless spectators witnessing the violation of rules /instructions which are wholly applicable to all schools regardless of their possessing a minority status. This has been amply clarified in Section 8 of DSEAR '73 and is not being altered in any way. Administrative measures and clarity of thinking and understanding is required-not a change of law.

Possible Risks of Accepting the Suggestions

- Managements of private schools may oppose the increased representation of parents on the ground that there would be over-interference by such members.
- The management may claim that qualifications and experience of the Manager has nothing to do with the competence of a person in charge of administration.
- The minority schools would resist and question written comments by officers of the Directorate of Education.

Benefits of the Recommendations

- The presence of 4 parent members in a 21 member committee of an unaided school denotes only 20% representation. In aided schools it is more than 35%. Parents of EWS children would be able to ensure that interests of these children are safeguarded.
- An educated and experienced Manager can deal with the challenges of school management with greater administrative acumen and sense of accountability.
- Training the Education Directorate's nominees to handle unfair recruitment practices in all schools where they act as the DE's nominee would obviate the need for employees having to seek redress through the courts. It would also require them to be objective in recording their views which would reduce the element of subjectivism.

SECTION - 06 Aid to Recognised Schools

RULES 60-92

This Section deals with the grant of Aid to recognised schools.

Issues Involved

Shortage of Funds

- One of the major problems faced by these schools is shortage of finances. In a school with an average strength of 1000 children, the management has to meet an approximate expenditure of Rs.12 lakh per annum as its 5% contribution towards the salary of employees and approximately another Rs. 3 lakh on other expenditure. (Calculation sheet is placed as Annexure-11 in Volume-III).
- As regards, meeting the increasing deficit between the grant-in-aid and the minimum actual expenditure on running the schools, some Managements have taken recourse to the commercial use of the school buildings or undertaken expansion for commercial use. Some have used the school buildings partially for raising money under the garb of rendering differently designed educational services. All these factors have diverted the attention from the progress of the school work to other non-school activities.

Shortage of Space

- While the problem of shortage of funds can be tackled by adopting legitimate means, problems like insufficiency of space and lack of playgrounds cannot be overcome without reducing the status of Senior Secondary Schools to Secondary or Middle and from Secondary to Middle or Primary.

Lack of interest on the part of Managements in running the school

- Due to a gradual decline of interest of Management in running aided schools the academic atmosphere of a number of schools has fallen. In time this has led to a decline in enrolment too. Data enrolment figures are placed as Annexure-12 in Volume-III. There are aided schools which have enrolment as low as 73 students in the entire school. Nearly 40 schools have only 360 children enrolled in each school. Clearly something is radically amiss.

Unfair Treatment Meted out to Aided Schools

- The representatives of Aided schools informed the Review Committee that they were upset that the Government treats them at par with the Government schools but does not provide commensurate funds to aided schools as given to Government Schools. As a result the children of aided schools are deprived of extra-curricular activities like excursions/historical trips, preparing the school magazine etc. Many legitimate ways of raising funds as provided under DSEAR '73 have been stopped under orders of the Directorate of Education passed over the years.

- Government has also stopped giving the aided schools grants for purchases of Science materials/equipment or furniture which were admissible earlier. The managements have expressed a desire to close down aided schools and run unaided schools instead which would be according to them a more viable option.

Views of Mohinder Committee 2003 relevant to Aided Schools

- The problems of aided schools are not an over-night phenomenon and the department has been aware of the problems for years. The Government constituted a Committee under the Chairpersonship of Ms. Mohinder, Regional Director (North). The Mohinder Committee (2003) which was set up to go into these problems had made the following recommendations.
 - If no genuine management comes forward to take back the schools, it may be owned as a Government School after expiry of 5 years. The land and all other assets to be taken over the Government.
 - Grant-in-Aid may be increased from 95% to 98%.
 - 90% of actual electricity and water bills may be paid. Only voluntary donations be allowed and these must be clearly accounted for.
 - For improving the process of selection, the proceedings of Selection Committee be completed on the same day and all papers prepared and signed on the same day.
 - For meeting the financial crunch, the schools be allowed to hike Pupil Fund and also invoke Rule 151 which provides that the Managing Committee of an aided school may charge with the previous approval of the Director, a development fee from the students in order to cover expenses incurred by it in effecting special improvements for which no aid is admissible such as appointing additional teachers for special subjects or for providing special amenities to students.
 - If enrolment falls below norms, the school may be closed. Children and teachers be adjusted elsewhere and all its assets be acquired by Government
 - Reserve fund be raised to Rs 1 lakh + Rs. 80 per student as per norms accepted for basic maintenance of school building. Managements be asked to deposit in the Reserve fund three months' salary of staff plus Rs.50, 000 towards its share for retiring employees.

No action appears to have been taken on these recommendations which are relevant even today.

Closing down aided schools

- Some representatives of the aided schools had indicated to the Review Committee that they should not be forced to continue to run an aided school against their wishes and should be allowed to close down the school and withdraw from the management of such a school. All aided schools are not on all fours but the principle that no one should be forced to fulfil a responsibility in the face of unwillingness has to be recognised

Action Recommended

Treating Aided Schools as a Separate Entity

- Since government-aided schools are in a sense schools aided by the Government and

not government schools, the proposal to treat them as a separate entity distinct from unaided private schools and government schools should be considered, purely in the interest of delivering quality education. For any management to make running the school worth it has to break even and have some surplus to spend on innovation or sudden needs. Stopping all avenues of legitimately raising resources is counterproductive. The provisions which were in the DSEAR '73 need to be restored. Of course there have to be sufficient checks to prevent any commercialisation at the expense of the pupils and the answer lies in conducting random checks and levying of prompt penalties if there is mismanagement.

- Aided schools may be allowed to charge tuition fee from secondary and senior secondary students which would give sufficient leeway to them to promote school activities. At present even well-to-do and affluent parents are not paying any fees for the education of their wards. The Review Committee feels that aided schools may be allowed to charge tuition fee @ Rs.150/-per month from students of class IX onwards and science fund / music fund / home science fund from students of class XI onwards if they avail of the teaching under the relevant stream. The Managements may be allowed to use this tuition fee collection towards 5% share of the salary of teachers and other expenditure. (This has been dealt with in the recommendation relating to Section 17). They may also be allowed to levy Rs.200/- as admission fee from freshly admitted students who join from other schools after completing elementary education.
- The Pupil Fund may be revived which would enable the managements to conduct the annual function, publish a magazine and to take children on excursions. Such extra-curricular activities are a necessary part of the learning process for children. In the absence of these pursuits, the children of Aided schools are deprived of many educational experiences which their counterparts in Government schools benefit from regularly.
- Electricity, water and fixed telephone charges account for a major share of expenditure incurred on the establishment. Being essential facilities, it is not possible to curtail expenditure on these essential services. If the expenditure is reimbursed an actual basis, it would ease the financial pressure on managements.
- Often it becomes necessary for Managements to arrange for teachers for teaching special subjects or for giving special coaching due to long absence of regular teachers or for other administrative reasons. For this no aid is admissible. Sometimes there is a need to provide amenities like fans, cool drinking water etc. for the children. Due to shortage of funds, the schools skirt doing anything and the children are denied essentials.
- Under Rule 151⁴ of DSEAR '73 Managements can levy development fund from children with the permission of the Director. Generally such requests are not entertained or are declined for fear of misuse of funds. It is recommended that whenever a genuine request is made by a management the school should be allowed to levy a development fund. Approvals need to be conveyed within 15 days and the designated officer should be delegated authority subject to guidelines which should be shared with the schools.* No doubt it would require monitoring on the part of the department and imposition of penalties if the funds are not used as claimed. In that case penalties can be imposed.

Oversight of Fund Management by Aided Schools

- Revamping of aided schools should not mean freedom from any checks. Accountability of managements would need oversight as 95% of the salary charges are paid by the Government.
- Government may restore the earlier practice of annual grants for purchase of science

material, furniture, library, petty repairs of buildings as permissible under various Rules from 73 to 88. Since the amounts mentioned under these provisions have no relevance to the present day price-index, a Committee comprising persons with a finance background may be constituted to review the amounts mentioned under various provisions.

- In order to safeguard any misuse of funds, the Management may be asked to display details of purchases made or projects undertaken on the school website. Failure to update the website by a given date each month should invite a penalty particularly in the cases of recurrence.
- Once the aided schools' capacity to raise the pupil's fund, development fee and science fee is restored the aided schools will have sufficient leeway to provide better facilities. However to ensure that there is transparency and accountability the schools may be brought under the same regime of disclosing physical and financial assets and expenditure using the same proformas I & II prescribed for unaided schools under Section 18. The scrutiny by Cost Accountants and chartered accountants may also apply as the examination by the Directorate Staff does not seem to carry adequate vigour or consistency*.
- The accounts of Aided schools are audited by the audit branch of the department. The schools may be asked to specifically obtain an 'arms length certificate' from the Chartered Accountant, to see that interdependencies are not built up- a complaint which was brought to the notice of the Review Committee by various representatives.

Improving Enrolment

- The problem of falling enrolment in aided schools can be contained to a large extent if children are allocated to aided schools in the annual admission plan. Under Rule 133(2) the Director of Education can prepare an annual plan for admission of students in various classes for the aided schools in Delhi. This system was followed earlier but since the last few years the system appears to have been discontinued. The provision under this Rule should be followed and no change of law is needed.

If this suggestion is agreed to, a legal formulation to include Aided Schools within the ambit of web-based reporting would have to be made applicable to them.

Dealing with Unwilling Managements

- It's a fact that there are a few managements who do not want to run aided schools

- 4 Rule-151: The Managing Committee of an aided school may charge, with the previous approval of the Director, a development fee from the students in order to cover expenses incurred by it in effecting special improvements on which no aid is admissible under these rules.
- (2) Development fee may be charged at such flat rate as may be specified by the Director and shall be utilised for one or more of the following purposes, namely :-
- (a) appointment of additional or more qualified teachers in excess of the number admissible under the rules relating to post-fixation or aid;
 - (b) provision for teaching of special subjects approved by the Director for which no aid is admissible under these rules;
 - (c) purchases of any special teaching or audio visual aids and other equipments which are not possessed by the school;
 - (d) Provision of special amenities to students, such as, additional fans, supply of cool drinking water, provision of materials for hobbies, craft and medical aid.
- (3) Where any development fee is levied to meet the pay and allowances of additional or more qualified teachers, such teachers shall be appointed on ad hoc basis and shall have no claim whatsoever for regular appointment, seniority or benefits of provident fund, pension gratuity or any other benefit admissible to the regular teachers of the school:
- Provided that such teachers may apply for regular appointment as and when a regular vacancy arises in the school.
- (4) Where any such teacher is selected for regular appointment, such appointment shall have effect from the date of the regular appointment and not from the date from which such teacher is working in the school as a teacher paid from the development fee.
- (5) Appointment of teachers who are paid from the development fee shall be subject to these rules in so far as they relate to the appointment of regular teachers in the school.

any longer and are willing to close them down. It may be made clear to such managements that if even after getting all financial support from the government, they are unable to improve the enrolment in three years and bring it to the prescribed level as defined under Rule 67 of the existing Act, the government may:

- if the school is located on government allotted land, restore the land to government and compensation on assets may be paid as per their depreciated value to the management.
- if the school is located on private land, may ask the original land allotting authority and local authorities to take appropriate action as the land use would have stipulated “education” as the purpose. Failure to use the land for the purpose defined would invite cancellation of the allotment. However the running of an unaided school may be allowed.
- if such schools that have reached a point of extinction because of drastic fall enrolment, proportionately downgrade or close down such schools and transfer their assets including the buildings to other registered societies or run these as government schools.

Restoring Other Means of Raising Funds

- There are also other legitimate means which can and should be used by the aided schools to raise the funds needed by them. Some of these means are:
 - Soliciting contributions from Alumni (which should not be taken into account while computing their grant-in-aid).
 - Prescribing reasonably generous PTA subscriptions.
 - Seeking voluntary donations from parents/guardians under Rule 155 (3) of DSEAR '73. (This should be permitted once a year and with the approval of PTA.)

Change in Departmental Approach

- The degree of dissatisfaction that prevails between aided school managements and the Directorate of Education can be substantially removed if the officials dealing with such schools adopt a positive attitude, show empathy and promptness while dealing with routine cases and while releasing essential and/ other special grants. Oversight of the disposal of pending matters is necessary for which administrative checks are needed.

Closing Down Aided Schools

- Some representatives of the aided schools had indicated to the Review Committee that they should not be forced to continue to run an aided school against their wishes and should be allowed to close down the school and withdraw from the management of such a school. All aided schools are not on all fours but the principle that no one should be forced to fulfil a responsibility in the face of unwillingness has to be

• Rule 155(3) reads as –

- (3) Voluntary donations collected by the Managing Committee of an aided school shall be accounted for separately and may, at the discretion of the Managing Committee, be utilised for meeting the Managing Committee’s share of the expenses referred to in sub-Section (2) of Section 10.

Rule 156 reads as -

- (1) The Managing Committee of an aided school may, with the previous approval of the Director, also invite voluntary contributions from the parents or guardians of the construction of any building for the school or its hostel ¹[or for the extension of such building or hostel.
- (2) No appeal for any such contribution as is referred to in sub-rule (1) shall be made at the time when admissions are made to the concerned school or when results are declared by the school.
- (3) Charging any other contribution such as development fund with the permission of the Directorate of Education.*

recognised. If it is not acknowledged, the pupils and teachers of such schools would bear the brunt of neglect. The DSEAR '73 already provides under rule 47 as to how the students and teachers should be reassigned if the government decides to close down an aided school. However the contentious issue of land would have to be addressed upfront as the request to close down a school is reported to stem from an effort to use the land for a purpose that increases returns-although this is not always the case. Aided schools that wish to close down the school or withdraw from running it fall into the following categories:

- i) Schools that got land at concessional rates from the Government/DDA. In such cases it would not be proper to allow the schools to withdraw running the school and also continue to have ownership of the land. In case they wish to relinquish running of the school, the land has to be first restored to the government.
- ii) In case the ownership of the land is with the Management, they should be permitted to close down the school and the teachers and pupils can be transferred to other schools in accordance with Rule 47. But the land would not be available for any other purpose except to run as unaided school on from specified by the government.
- iii) If the school management is willing to transfer the land and building to the government free of any conditions or encumbrances, in the interest of the pupils not having to continue with a poorly managed school, the children should be moved to government schools. The property can then revert to the government to be used in whatever way considered suitable or sold off by auction. The teachers of such schools should be dealt with as in the case at (ii) above.
This requires a policy decision in consultation with DDA/local body. Hence the Suggestions have not been taken forward in the legal formulation of the proposed changes in the Act & Rules in Volume II.

- The Government could consider setting up a Committee with representatives from DDA/MCD and the concerned Directorate of Education (Primary Education under MCD and Elementary and Secondary Education under GNCT) to give a preliminary report after inviting applications from the 262 aided schools. However it would be advisable to do this only after the revival measures which have been recommended for improving the viability of the aided schools have been in force at least for one year. In that way, schools that have an interest in continuing with a more reasonable dispensation would have the opportunity of doing so.

Imponderables

- Managements which are interested in the closure of the aided schools would probably resist re-allocation of children under the admission plan.
- A few parents may resist levying of fees.

Positive Effects

- With the easing of financial pressure, managements may start taking interest in the overall upliftment of the school.
- Diverting some children to Aided Schools would ease pressure on overcrowded government schools.
- Discontentment among teachers of Aided Schools would be resolved because they may no longer be asked to shell out 5% share of management from their own pocket.
- Infrastructural facilities would improve and more parents would be interested in admitting their children to these schools.

Accordingly, the Government may restore the grants specified under Rule 73 to Rule 88 of the DSEAR '73 so that the management of aided school is able to utilise these statutory grants for proper upkeep of the school buildings, equipments, furniture etc

SECTION - 07

School Property

There appears to be no repugnancy in Section 7 which relates to school property in respect of aided schools. However, the word “Administrator” may be substituted with the word “Government” and “Managing Committee” replaced by “Managing Body”.

SECTION - 08

Terms and Conditions of Service of Employees of (Recognised) Private Schools

RULES 96 to 121

This Section deals with the terms and conditions of service of employees of recognised private schools.

Issues Involved

Prior and post approvals of Director

- The provisions in respect of requiring the approval of Director of Education for dismissal, removal, reduction in rank and suspension under Section 8 of DSEAR '73 have been subject matter of litigation. In various judgements,⁶ the Court has directed that the provisions in respect of getting prior approval of Director are not applicable to unaided recognised private schools.

Need for Setting up Grievance a Mechanism to Redress Employee Grievances

- An avenue of redress has to be provided for employees of private schools particularly as the complaints are numerous. The Review Committee felt that there is a need to set up an independent and effective mechanism under the Act and Rules to redress employee grievances including violation of terms and conditions of employment, but this should be enabled without direct involvement of the Directorate of Education.
- During discussion, it was suggested to the Review Committee that many employees hesitate approaching the Tribunal for redress of grievances and therefore an alternative mechanism through arbitration may be introduced.

Discussion on Tribunal's Orders in respect of Pay and allowances

- The existing Rule 121 under DSEAR '73 stipulates that the Management Committee may decide the pay and allowances to be paid to an employee after he is reinstated or on revocation of the suspension/dismissal. It has been found that despite orders of the Tribunal to pay specific back wages the Management Committees challenge the jurisdiction of the Tribunal and go to the High Court. This defeats the purpose of adjudication before the Tribunal. This too needs to be addressed.

* Managing Committee of Geeta Bal Bharti Senior Secondary School and Kathuria Public School Vs. Director of Education and Ors. 123(2005) DLT 89, dated 22.07.2005

Action Recommended

Prior and post approvals of Director- Need to amend Section 8*

- The High Court of Delhi in the Managing Committee of Geeta Bal Bharti Senior Secondary School and Kathuria Public School Vs. Director of Education and Ors.

123(2005) DLT 89, dated 22.07.2005 held that private unaided schools shall not require the prior or post approvals of the Director for dismissal/removal/reduction in rank and suspension of their employees.

- In view of this the provision has to be omitted but a mechanism for grievance redress is being suggested through the process of arbitration and also by enhancing the powers of the Tribunal to adjudicate on all such service disputes of unaided schools. The result of removing Government/DE's role in approving suspension and punishment meted out to a teacher or any employee of unaided schools would leave the employees with no mechanism to redress grievances against mala-fide or arbitrary action. Therefore to provide a forum, the Review Committee recommends that :-
 - The powers of the Tribunal be specifically described which has been incorporated in the new Section 11.
 - An alternative forum through the process of arbitration which has been suggested may be introduced which would enable quick settlement of the grievances .

This process is described in the ensuing paragraph with justification.

Arbitration Mechanism

· In the meeting of the Review Committee held on 21.07.2011, a discussion was held on the existing provisions for resolution of disputes under Delhi School Education Act. Ms. Gita Sagar, IAS (Retd.), who also happened to be the Secretary (Education) in GNCTD and later the Chairman of the Delhi Co-operative Tribunal, pointed out that the existing system of redressal of grievances of an employee of private recognised schools was not sufficient. She suggested that the disputes resolution under the Delhi Co-operative Act, 2003 may be examined by the Review Committee wherein the disputes between a co-operative society and its members or amongst members are referred to arbitrators appointed by the Registrar. The decision can be challenged by either party before the Delhi Co-operative Tribunal as the Appellate authority. Similarly, the disputes between the employees and private school managements under the DSE Act could also be referred to the arbitrator appointed by the Director of Education. The award passed by the arbitrator may be challenged by either party before the Delhi School Tribunal as appellate Tribunal.

- The provisions of the DCS Act, 2003 were examined by the Review Committee. Under the DCS Act, almost every type of dispute between the management of a society and its members are referred for arbitration. There are provisions for the selection and appointment of arbitrator by the Registrar by seeking applications through advertisements issued in the newspaper.
- The Review Committee felt that the concept of arbitration as provided under the DCS Act may be introduced in the Delhi School Education Act in all disputes between the management of recognised private schools including aided schools and employees. A provision may be made for filing appeals against the awards made by the Arbitrator before the Delhi School Tribunal. Arbitration fee may be fixed according to the level of the employee.
- The provisions for arbitration of disputes amongst members of co-operative societies provided in the Delhi Co-operative Societies Act, 2003 were considered by the

* Sub-Section (2) of Section 8- dismissal/removal/reduction in rank.
 Sub-Section (3) of Section 8- appeal before Tribunal
 Sub-Section (4) of Section 8- Suspension Procedure
 Sub-Section (5) of Section 8-Suspension without approval

Review Committee. It was the general consensus that the arbitration fee should be shared by both the parties and in case, the decision of arbitrator goes against the management of the recognised private school, the arbitrator may direct that the management pay expenses to the aggrieved employee as the circumstances warrant. The award of the arbitrator may be appealed by any party before the Tribunal. In case, no appeal is filed by any of the parties within the stipulated period, the award may be executed as a decree of the court and the amount recovered as arrears of land revenue in case monetary consideration is involved.

- Accordingly the addition of new Sections 9, 10 and 11 is being suggested in the Delhi School Education Act to provide for a mechanism of arbitration, prescribing a procedure for making references to the arbitrators, panel of arbitrators and execution of award of arbitrators. New rules have also been suggested in respect of arbitration on the lines of the Delhi Co-operative Societies Rules, 2007.
- Although there is no mention in the proposed Rules, the Director of Education can always refer matters for conciliation before a Regional Director/Deputy Director of the District to avoid the need for arbitration. This can be called a Conciliation Mechanism or a Grievance Redressal Forum an option that both parties could opt for, more in the nature of counselling to bring about rapprochement. A fixed date in the month would need to be laid down (e.g. first working Monday of the month) so that there is no delay and the parties can be left to seek this option voluntarily and with mutual agreement. This would be a purely advisory body and would have limited value as its decision would not be binding and a lot would depend on the attitude and interest taken by the officer.

Certain consequential amendments in Rules

- Retirement age under rule 110 has been modified to 60 years.
- The provisions of prior approval in rules 105* and 114A*, 115* and 120*⁸ in respect of private unaided schools have been omitted.
- Where the Head of the Schools is a witness to a dispute, it has been expressly provided in Rule 118 that the Head of school should not be a member of the committee.
- The existing Section 8 has been modified and three new Sections 9, 10 and 11 have been added in Chapter IV.

[Renumbering

Section 8 has been replaced with new Sections 8, 9, 10 and 11]

Rule 105* extending probation period of employee.

Rule 114A* acceptance of resignation by Management Committee.

Rule 115* suspension.

Rule 120* imposition of major penalty.

SECTION - 09

Employees to be Governed by Code of Conduct

RULE 122

This Section provides that every employee of the recognised school shall be governed by Code of Conduct as may be prescribed.

Issues Involved

- Proviso to Rule 122 states that the code of conduct as well as penalties for breach of any provisions of such Code of Conduct shall be separately specified in the Contract between the management and employees. By virtue of omission of Section 12, 13, 14 and 15 (as discussed in chapter on Section 12), now the employees of unaided minority schools are governed by the same Code of Conduct and penalties as for the non-minority schools. Therefore, the consequential amendments are required in Rule 122.

Action Recommended

Directions of Apex Court

- In the Frank Anthony Public School Employees Association versus Union of India (AIR 1987 SC 311) decided on 17.11.1986, the Supreme Court held that Section 12 of the DSE Act is discriminatory and void by observing as under, -

“21. Thus, Sections 8(1), 8(3), 8(4) and 8(5) do not encroach upon any right of minorities to administer their educational institutions. Section 8(2), however, must, in view of the authorities, be held to interfere with such right and, therefore, inapplicable to minority institutions. Section 9 is again innocuous since Section 14 which applies to unaided minority schools is virtually on the same lines as Section 9. We have already considered Section 11 while dealing with Section 8(3). We must, therefore, hold that Section 12 which makes the provisions of Chapter IV inapplicable to unaided minority schools is discriminatory not only because it makes Section 10 inapplicable to minority institutions, but also because it makes Sections 8(1), 8(3), 8(4), 8(5), 9 and 11 inapplicable to unaided minority institutions. That the Parliament did not understand Sections 8 to 11 as offending the fundamental right guaranteed to the minorities under Article 30(1) is evident from the fact that Chapter IV applies to aided minority institutions and it cannot for a moment be suggested that surrender of the right under Article 30(1) is the price which the aided minority institutions have to pay to obtain aid from the Government.”

22. The result of our discussion is that Section 12 of the Delhi School Education Act which makes the provisions of Chapter IV inapplicable to unaided minority institutions is discriminatory and void except to the extent that it makes Section 8(2) inapplicable to unaided minority institutions. We, therefore, grant a declaration to that effect and direct the Union of India and the Delhi Administration and its officers, to enforce the

provisions of Chapter IV (except Section 8(2)) in the manner provided in the Chapter in the case of the Frank Anthony Public School.”

Effect of Judgment

- According to the above judgment, the provisions of chapter IV which are in respect of terms and conditions of services of employees of private recognised schools including their salaries, code of conduct and right to appeal before Tribunal became applicable to unaided minority schools except that the unaided minority school would not be required to seek prior or post approval of Director to dismiss, remove, reduce in rank or to terminate the services of employees. After the applicability of chapter IV to unaided minority schools, the provisions of chapter V which are in respect of the similar provisions relating to unaided minority schools became redundant. Therefore, in chapter relating to Section 12 it is proposed to omit Section 12 along with Section 13 to 15 of chapter V.
- Consequently, the proviso to Rule 122 which provides that in case of an employee of an unaided minority school, the penalties for breach of any provision of the Code of Conduct as may be specified in the contract of service between the management of school and the concerned employee is proposed to be omitted. Resultantly, the employees of unaided minority schools shall also be governed by the Code of Conduct and shall be liable to disciplinary action, specified in Rule 115 for the breach of any provision of the Code of Conduct.

[Renumbering

Section 9 has been renumbered as Section 12.]

SECTION - 10

Salaries of Employees

This Section makes it mandatory for private schools to pay salaries as per Government norms. There is no problem with full fee payment by aided schools because they are getting 95% aid from Government but there are repeated complaints of under payment by unaided schools.

Issues Involved

Concerns Expressed by Schools Charging Low Fees

- It was the concern of the various schools that the condition imposed upon private schools to pay salaries and allowances to their employees at par with corresponding employees of Government should be omitted. Their plea was that the fee collection of low fee charging schools is not sufficient to meet the expenditure on salaries which are too high as per Government norms.

Ground Realities

- It was reported by officials of Department that a number of disputes/complaints arise because teachers are not paid full salary, although on paper it is shown as paid. Some of the representatives that came before the Review Committee stated candidly that they only follow the directions on paper and pay much less to the teacher in actual fact. Instances of full pay being given by cheque and a part of the payment taken back in cash were said to be rampant. No teacher apparently represents for fear of losing the job. While applying for new jobs the teachers do not hesitate to give the actual salary which could be as low as Rs 5000 per month. This situation needs to be confronted squarely and tackled, as it amounts to a fraud and not taking action amounts to connivance.

Position under RTE '09 Act

- Section 23 (3) of the RTE '09 Act, empowers the Government to prescribe the salary and allowances payable to an employee of the school.
- Section 38 of the RTE '09 empowers the appropriate Government to make rules and Section 38(2)(1) of the RTE '09 Act provides that the appropriate Government, in particular, may make rules prescribing the salary and allowances payable to, and the terms and conditions of service of teachers, under Sub-Section (3) of Section 23.
- Section 2(a) defines “appropriate Government” as the State Government within whose territory the school is established. The GNCTD, is thus empowered to make rules under Sub-Section (3) of Section 23 read with Section 38(2)(1) of the RTE Act prescribing the salary and allowances payable to, and the terms and conditions of service of teachers up to elementary level.

Action Recommended

Schools Charging Low Fees

- A number of Association representatives pleaded that the salary of school employees had already been hiked excessively and it was just not possible for low fee charging schools to pay such high salaries. Salaries should be linked to fees particularly in schools serving populations in less affluent pockets of the city.
- A contrary plea made before the Review Committee was that it would be a retrograde step to repeal the Section as the quality of education would suffer and there would be open exploitation of teachers.
- Since the two Committees set up by Government viz. Duggal Committee (after V Pay Commission) and Bansal Committee (after VI Pay Commission) gave recommendations accepted by government it might open a hornet's nest to suddenly allow schools to pay what they wish to as the matter had been settled finally. On the other hand the ground realities need to be confronted. Some schools charge hardly Rs.500/- to Rs.1000/- per month as fees. Others charge Rs.1500 – to Rs.3000/-. The most expensive schools even charge Rs. 7,000- Rs 12,000 per month. The expectation that all schools can uniformly pay government scales to the teachers is being unrealistic. The Review committee recommends that the teachers' salaries should have some relationship to the school fees in the case of smaller schools. A bench mark could be that 50% of the fee collection would have to go towards teachers' salaries. 40% teachers may be allowed to be taken on contract basis except for core subjects. Both these measures may bring some realism into what has become a game of charades.
- The Review Committee also consulted with the Secretaries of Education Departments in the State of Andhra Pradesh and Kerala on the salaries payable to teachers in the private recognised schools. In the State of Andhra Pradesh, as per G.O.Ms.No.1 Education (PS.2) Dated 01.01.1994 (issued under A.P. Education Act, 1982), Section 18 reads Governing Body of the school shall fix fee structure for fee to be collected from pupils in all unaided Primary, Upper Primary and High Schools in the State. Under the G.O. in the same Section 18 (4) (d), it is clearly prescribed that 50% of the fee collected shall be earmarked towards payment of salaries to the staff.
- As per the information received from the State of Maharashtra and Kerala, the employees in the CBSE/ICSE school shall be offered the same pay scales as in Government Schools for equivalent categories. The pay shall start at the minimum of the scale and employees shall be eligible for DA and increments as is allowed in Government Schools from time to time.
- To ensure that there is no suppression of facts the prescription of Proforma's I & II described in Section 18 would ensure that there is due scrutiny of what is claimed. However since teachers are a valuable resource and need to be compensated adequately, the salaries paid should not be lower than the government rates prescribed for contractual teachers. However while retaining Section 10 as it is in DSEAR '73 the schools may additionally be allowed to appoint up to 40% teachers on contract basis, for non-core/ optional subjects only.
- Disbursement of salary may be made through ECS in respect of employees of private unaided schools which may be made mandatory. This would safeguard the interests of employees to a greater degree.

[Renumbering

Section 10 has been renumbered as Section 13.]

SECTION - 11 Tribunal

For adjudication of the disputes between the management and the employees of the recognized private schools, Section 11 of the Delhi School Education Act, 1973 provides for the constitution of a Tribunal. The Delhi School Tribunal having its office at Patrachar Vidyalaya, Timar Pur has been constituted by the Administrator (now Lt. Governor) under this provision. It provides a judicial platform for filing appeals by aggrieved employees of recognized private schools.

Issues Involved

Limited Jurisdiction of Tribunal

- During discussions held with various stakeholders, it was informed that the present Tribunal exercises very limited jurisdiction. The Tribunal is empowered under Section 8 (3) of the Act to adjudicate appeals of only those employees who have been dismissed, removed or reduced in rank by the management of a school.
- Though, Rule 120 (3) of the Delhi School Education Rules provides an employee a right to appeal before the Tribunal against any order imposed on him including penalty of compulsory retirement or any major penalty, and this was duly upheld in the Kathuria Public School Vs. Director of Education(2005) this was set aside by the order of 3 judges of Delhi High Court including the Hon'ble Chief Justice and it was conveyed that the order given in the Kathuria Public School case does not lay down the correct law and it further suggested that a set of Rules should be framed as expeditiously as possible so that the orders passed by the Tribunal are executed and also for enhancing the jurisdiction of the tribunal to hear all grievances of the private school teaches. The wording of the order is as follows:

“In view of our preceding analysis, we answer that Delhi School Tribunal has no jurisdiction to deal with all the grievances of the school teachers and employees including minor penalties as defined in Rule 120(3) of the Rules. That apart a matter of suspension or a prolonged suspension cannot be a matter of challenge before the Tribunal as that has not been so envisaged or in the provision of appeal. In the absence of such engrafting, it is difficult to clothe the appellate tribunal with such jurisdiction.”

- Today the Tribunal has jurisdiction to entertain appeals in respect of a major penalty, but, an employee has to move the Civil Court or the High Court for redressal of grievances relating to minor penalties. This obviously needs to be addressed.

Supreme Court Order

- The constitution of a special Tribunal to hear all grievances of the employees of private institutions was directed by the Supreme Court in para 64 of its judgment in TMA Pai's case (2002). The Delhi High Court in the Managing Committee of Geeta Bal Bharti Senior Secondary School and Anr. Vs. Director of Education and Ors.,(2003) also stressed upon the Government the need for constitution of a specialized Tribunal and directed, -

“The State Government is, thus, directed to take necessary steps in this behalf to ensure that the Officer dealing with matters relating to the Tribunal should be exclusively dealing with such matters and the needful be done within a period of one month from today in consultation with the High Court as mandated in para 64 of the judgment in T.M.A. Pai Foundation’s case.”

Opinion of Government Counsel on Enhancing Powers of Tribunal

- Recently, Government Counsel of GNCTD, Mrs. Avnish Ahlawat representing Education Department before the Hon’ble Court in O. Ref. 1/2010 has informed Hon’ble Court that the Government is stipulating framing of rules for the purpose of execution of the orders passed by the Tribunal. She has also suggested the Government to consider following amendments in respect of Delhi School Tribunal, -

“In the Act and Rules, some procedure is required to be provided for implementation of the judgments of the Tribunal;

- The powers to punish for its contempt may be provided in the Act itself;
- Section 11 and Rule 11 may be amended to the effect that the Tribunal shall have powers to deal with all service disputes of an employee of private recognized, aided or unaided schools;
- Section 8(3) of the Act may be amended by adding “any other major or minor punishment or any service dispute concerning ACR, seniority, promotion, pay and allowances etc.,”

It was also pointed out that there are instances that the directions/ orders issued by the Tribunal in any particular matter has not been implemented by the parties more particularly schools. In such a manner, the private schools make a mockery of the judicial system by not following the directions issued by the Tribunal.

Recently the Tribunal has exercised its powers of an appellate court for execution of its order by directing attachment of bank account of school for an amount of Rs. 20 lakhs in the matter of Contempt Application 93/ 2009 in Appeal No. 32/2005 in the matter of Kailash Chand Jain v. Cambridge Primary School and Others. On a writ petition filed by the school management, the order has been stayed subject to payment of half the amount and the matter is under consideration of the High Court. However, an express provision to ensure execution of order made by the Tribunal is required for giving teeth to the Tribunal.”

Signed
Avnish Ahlawat
Government Counsel
Delhi High Court.

Ineffectiveness of the Penalty Clause

- It was further pointed out that under Section 27 of the Delhi School Education Act, along with the sentence of imprisonment, a fine of Rs. 1000/- has been provided in case the manager omits or fails to carry out the orders made by the Tribunal, without reasonable excuse. In case, the Tribunal chooses to impose only fine on the defaulter, the amount Rs. 1000/- does not act as a deterrent.
- Therefore, the amount of fine under this Section may be increased from Rs.1, 000/- to Rs.50, 000/-. Since the fine of Rs 1000 was specified in 1973, the increase suggested is not exorbitant keeping in mind the passage of 38 years. A provision may also be made for the fine being imposed on day to day basis in case of non-compliance of the orders of Tribunal.

Action Recommended

Enlarge Jurisdiction of Tribunal

- There is a need to enlarge the scope of jurisdiction of the Tribunal in respect of all grievances and disputes, including minor or major penalties, of the employees (whether contractual, regular or ad-hoc) of the private recognized schools, aided or unaided, on the pattern of Central Administrative Tribunal in the case of Government employees.
- The Tribunal may be declared as a Court for the purposes of Section 195 and 340 of the Code of Criminal Procedure to enable it to punish a person for perjury. Section 195 of the Cr.PC provides that for the purposes of Section 195, the term “Court” means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this Section.

Penalty Clause

- Section 27 of the Act may be amended to enhance the amount of penalty and to provide for recurring penalty in monetary terms to be levied on a day to day basis in case of non-compliance of the orders of Tribunal.
- The power of the executing Court may be conferred upon the Tribunal for execution of its orders as per Order XXI of the Code of Civil Procedure, 1908.
- There should be a period of 30 days for withdrawal of resignation submitted by an employee of a private school;
- There should a time limit on the span of suspension of an employee;
- The penalty provided under Section 27 may be enhanced to Rs. 50,000/- .
- Rule 121 of DSEAR ‘73 relating to payment of pay and allowances on reinstatement of an employee by virtue of the directions of the Tribunal may be amended to bestow finality on the orders passed by the Tribunal in this regard.
- Since the number of appeals before the Tribunal would increase after enhancement of the jurisdiction of the Tribunal, the Government may be empowered to create as many Benches of the Tribunal, as the need arises.
- The increase in the numbers of Tribunal benches would require that the scope of eligible persons who can be appointed as Presiding Officer of the Tribunal also required to be enlarged. Therefore, apart from serving officers of Delhi Higher Judicial Service (DHJS) who may not be available generally, because of the overall shortage, retired DHJS’ having 10 years experience as District Judge and not more than 62 years of age at the time of appointment may also be considered for appointed as Presiding Officers of the Tribunal.
- An express provision may be made in the Act for empowering the Tribunal to execute the order made by it.
- The Tribunal may be empowered to review its own decisions on the lines of provisions contained in the Educational Tribunals Bill, 2011 introduced by the Central Government in respect of higher educational institutions in Parliament.
- Other consequential provisions may be made where needed to meet these objectives.

Renumbering

[Section 11 has been amended and renumbered as Section 14 and new Sections 15 to 23 have been inserted.]

SECTION - 12 to 15

Applicability of Chapter IV to Minority Schools

According to the above Section, chapter IV which deals with terms and conditions of service of employees of recognised private schools is not applicable to unaided Minority Schools.

Issues Involved

- Under the DSEAR '73, minority schools enjoy following concessions: -
- Section 5: No need to get scheme of management approved. It is only to be kept in record.
- Section 21: A minority school cannot be "taken over".
- Rule 37(7)(ii): Prior approval of Director is not required for expulsion or rustication of a student.
- Rule 44: No essentiality certificate is required for opening a school.
- Rule 59(1)(b). In case of minority schools, members required to be elected by this Rule may be nominated by the Society or Trust by which the schools is established and run. Similarly in minority schools, two senior most teachers shall be co-opted by the Managing Committee. The educationist to be nominated by the Director shall be a non-official who shall belong to the minority community by which the school is run. There will be no Advisory Board nominee on the managing committee. The Director's nominee in managing committee are only advisor or observers. They are not entitled to take part in management of school.
- Rule 96. In aided minority schools, managing committee can fix the numbers of members of selection committee. None of the representatives of Department who are present on the selection committee for teachers has the powers to control selection. They can act only as observers and advisors.
- Rule 98. In aided minority schools, no approval of Director is required for appointing a teacher, even if Director's nominee was not present or if there was a difference of opinion among the members of Selection Committee.
- Rule 105. No prior approval of Director is required for extending probation period. Also, no prior approval of Director is required for terminating services of an employee on probation.
- Rule 127. Unaided minority schools can make recruitment of their employees through a Selection Committee constituted by the Managing Committee.

Directions of Apex Court

In the Frank Anthony Public School Employees Association versus Union of India (AIR

1987 SC 311) decided on 17.11.1986, the Supreme Court held that Section 12 of the DSE Act is discriminatory and void by observing as under, -

“21. Thus, Sections 8(1), 8(3), 8(4) and 8(5) do not encroach upon any right of minorities to administer their educational institutions. Section 8(2), however, must, in view of the authorities, be held to interfere with such right and, therefore, inapplicable to minority institutions. Section 9 is again innocuous since Section 14 which applies to unaided minority schools is virtually on the same lines as Section 9. We have already considered Section 11 while dealing with Section 8(3). We must, therefore, hold that Section 12 which makes the provisions of Chapter IV inapplicable to unaided minority schools is discriminatory not only because it makes Section 10 inapplicable to minority institutions, but also because it makes Sections 8(1), 8(3), 8(4), 8(5), 9 and 11 inapplicable to unaided minority institutions. That the Parliament did not understand Sections 8 to 11 as offending the fundamental right guaranteed to the minorities under Article 30(1) is evident from the fact that Chapter IV applies to aided minority institutions and it cannot for a moment be suggested that surrender of the right under Article 30(1) is the price which the aided minority institutions have to pay to obtain aid from the Government.”

22. The result of our discussion is that Section 12 of the Delhi School Education Act which makes the provisions of Chapter IV inapplicable to unaided minority institutions is discriminatory and void except to the extent that it makes Section 8(2) inapplicable to unaided minority institutions. We, therefore, grant a declaration to that effect and direct the Union of India and the Delhi Administration and its officers, to enforce the provisions of Chapter IV (except Section 8(2)) in the manner provided in the Chapter in the case of the Frank Anthony Public School.”

Effect of Judgment

- According to the above judgment, the provisions of chapter IV which are in respect of terms and conditions of services of employees of private recognised schools including their salaries, code of conduct and right to appeal before Tribunal became applicable to unaided minority schools except that the unaided minority school would not be required to seek prior or post approval of Director to dismiss, remove, reduce in rank or to terminate the services of employees. After the applicability of chapter IV to unaided minority schools, the provisions of chapter V which are in respect of the same provisions relating to unaided minority schools became redundant. Therefore, it is proposed to omit Section 12 along with Section 13 to 15 of chapter V.
- In respect of prior and post approval of Director to dismiss, remove, reduce in rank and to terminate the employees of unaided private schools, the Review Committee while suggesting amendments in Section 8 has already proposed to do away with seeking prior or post approvals under Section 8(2) in case of unaided recognised schools in light of the judgment of the Delhi High Court in Kathuria Public School's case (123(2005) DLT 89) decided on 22.07.2005.

Action Recommended

- In view of the above observations of the Court, it is proposed that Section 12 may be omitted.
- With the omission of Section 12, Sections 13, 14, 15 * which are provisions applicable to unaided minority schools too become redundant. Therefore, these too may be omitted.
- The omission of these provisions in no way affect the benefits enjoyed by the minority

schools as discussed in preceding paragraph. These benefits would continue to be enjoyed by the minority schools under the proposed legislation.

[Renumbering

Section 12, 13, 14 and 15 are omitted]

* Section 12- Chapter not to apply to unaided minority schools

Section 13 – Minimum Qualification for Recruitment of employees of unaided minority schools

Section 14 – Code of Conduct for employees of unaided minority schools

Section 15 – Contract of Service for employees of unaided minority schools

SECTION - 16

Admission to Recognised Schools

RULES 131-145

Issues Involved

Age of Admission

- It has been informed to the Review Committee that the existing provision is in conflict with the provision given under RTE '09. It is asserted before the Review Committee that under DSEAR '73 the minimum age of admission into class-I is 5 years while under RTE '09 it is 6 years.

Pre School

- Under Section 2(4) of DSEAR '73 schools include a pre-primary school while under the RTE '09 the provisions are applicable to 'pre-school' also.
- DSEAR '73 does not define the duration of 'pre-school'. However, under the educational set up in Delhi many schools have been running 2 years of pre-primary classes under the nomenclature of KG/ Nursery/Preparatory/Montessori. After the directions of the High Court of Delhi (2007) in LPA titled Rakesh Goel & Others Vs GNCTD the Ganguly Committee was set up which gave recommendation on the adoption of a common nomenclature of "Pre-primary" for the stage prior to class I and "Pre-school" for children attending a preparatory school for 2 years prior to class I. Hence, two different kinds of situations were accepted.

Academic Year

- In another case titled Social Jurist vs. GNCTD CWP 12490, the Delhi High Court had directed specifying the of cut-off date for calculating the age for admission. On the basis of the recommendations of the Ganguly Committee this was taken to be 31st March of the academic year for which admission was sought.

Admission of Children up to Class VIII from unrecognised schools

- Rule 141 of the existing Act provides for admission upto class VIII on the basis of affidavit in respect of children who have not studied in a recognised school. This serves the interest of the ignorant parents who admit their children in unrecognised schools but later they face problems.

EWS Children's Admission

- Every year a number of complaints pour in regarding admission of EWS children against free seats in private unaided schools. The general complaint is that the genuine poor are not able to approach the school while undeserving cases are given admission either pushed by influence, or with mutual agreement of the school and the parents.

Action Recommended

Age of Admission

- RTE '09 states that the child of the age of 6 to 14 years shall have the right to free and compulsory education. But, it also says that the child above six years if he has not been admitted to any class, should be admitted in appropriate class as was his age and if he could not complete the elementary education up to 14 years, he shall have the right to free education to the completion of elementary education. Accordingly, on a conjoint reading of this, general impression appears that the appropriate age for class one as per RTE '09 is 6 years. However RTE does not say that a child of lower age cannot be admitted into class 1. The right to free education will only accrue on attainment of the age of six years. Under the DSEAR '73 admission to class 1 starts after the age of five years. There is a feeling that if as a result of RTE children are admitted into Class 1 only at six, the child would be finishing school at 19 years and that has implications for higher education and job prospects. Keeping in view that there is no provision in the RTE '09 with respect to age of admission in class-I, the age of admission provided under Section 16 may not be disturbed and be retained as five years.

Age of admission in Pre-school

- A Sub-Section may be added in Section 16 to clarify that for admission into a “pre-school” one year prior to class I, the minimum age of admission shall be 4 years and for admission in a class two years prior to class I the minimum age shall be 3 years respectively as on 31st March of the academic year for which admission is sought.
- RTE '09 Act has not provided any cut off date for calculating the age for admission in class I and therefore the cut-off date for admission in class I be maintained as 31st March of the academic year for which the admission is sought.

Admission of Children up to Class VIII from Unrecognised Schools

- Rule 141 which deals with admission from unrecognised schools may be deleted with effect from 01.04.2013 or as under RTE '09 unrecognised schools would no longer be in existence as per law.

EWS Children's Admission

- For better monitoring of EWS admissions against the 25% of freeship seats, it would be appropriate if the department takes upon itself the responsibility of on-line distribution of a common admission form to maintain a record of the children –
 - Common admission form may be filled up on-line by parents residing within 1 km. radius using the services of a facilitation agency. A facilitation centre may be set up for each district by engaging an outsourced agency to fill the forms on-line for less educated parents according to the data they provide.
 - Parents may give preference up to five schools from the list maintained by the agency in the vicinity of the parents' and child's' normal place of residence.
 - Draw of lots may be done on the computer in presence of a senior officer, at the level of District Education Officer.
 - Undertaking should be obtained from parents that admission would be subject to verification of documents by the school and in case of any wrong information

pertaining to place of stay or income being given the admission would be cancelled and a complaint lodged for wilfully giving wrong information to mislead a public authority.

Possible After Affects

- Amending Rule 145 may be opposed by private (unaided) schools as infringement of their autonomy in making admissions. Influential people who have been able to secure admission will lose their importance and will complain for extraneous reasons. However 25% quota of EWS has to be administered with consistency and transparency. Hence this suggestion.

Positive Aspects

- Schools would welcome a clarification on the age of admission in pre-school classes because some of the associations had approached Apex Court to raise age of admission in nursery and KG classes of pre-schools to four and five years, respectively.
- A general discontent among genuinely poor people that their children are unable to get the benefit of free ship quota would be addressed. Transparency would be promoted. The State which is responsible for implementing the provisions of RTE would be able to keep track of every child and help the really underprivileged to benefit from the new system.
- It would reduce complaints being made to DCPCR.

[Renumbering

Section 16 is renumbered as Section 24.]

SECTION - 17

Fees in Aided Schools and Fee Determination in Private Unaided Schools

RULES 146-172

The first two sub-Sections deal with fee to be levied in aided schools and the third sub-Section deals with fees in private unaided schools.

Issues Involved

Complaints Voiced by Parents

- 17(1) and 17(2) apply only to Aided Schools and these pose no problem. However, under Section 17(3) in a private unaided school the power to fix the fee for the academic session has been given to the Managing Committee of the school which has to file a full statement of fee to be levied during ensuing academic session before the Director. This Section provides that without seeking prior approval of the Director, the Managing Committee cannot raise fee during the academic session. Since this Section empowers the Managing Committee to fix the fee annually, it is alleged by parents that the schools raise fees by nearly 10% every year as a right.

Version of the Schools

- The schools stated that they are permitted to seek 10% annual hike, due to hike in DA as announced by the Government from time to time and due to price rise. The Review Committee could not locate any administrative order to support this.

After effects of the Pay Commission Recommendations

- Each time the salary of Government employees is raised as a result of recommendations of Pay Commission, there is steep hike in fee because schools claim that as per the mandate of Section 10(1) they have to pay salary and arrears as payable to Government Servants and this necessitates a hike in fee.
- On the other hand, parents allege that the Managements instead of using the funds in reserve unduly fleece the parents. These claims and counter-claims have led to long-drawn litigation of the Association of Parents against the Government because they feel that the Government had failed to rein in the private unaided schools. Each time the Hon'ble Court has set up a Committee under a retired judge to look into the issue although with somewhat different terms of reference.
- In 1996, after the 5th Pay Commission, the High Court vide judgment dated 30.10.98 in the case of Delhi Abhibhawak Mahasangh Vs VOI in CWP 3727/97 Hon'ble High Court constituted a committee under Justice (Retd.) Santosh Duggal.
- In 2008, after the 6th Pay Commission, the Government set up the S.C. Bansal Committee, to look into the recognised school fees issue of public schools, which recommended a hike in fees depending on the financial health of the parents and schools.

- After the 6th Pay Commission another Committee has been set up under Hon'ble Justice Anil Dev Singh (Retd.) by the High Court of Delhi to look into the aspect as to how much fee increase was required by each individual school on the implementation of the recommendation of VI the Pay Commission, i.e. it would examine the records and accounts, etc. of these schools and taking into consideration the funds available, etc. at the disposal of schools.

Directions of the Hon'ble Court

- In the latest direction of the High Court (August 2011) in the matter of CWP 7777/09 titled Maha Abhibhavak Maha Singh and Ors. Vs. GNCTD, Hon Court has observed that —

79. “..... if a Regulatory body is established either by appropriate amendments in the Delhi School Education Act or by making a separate legislation or by administrative orders issued under the existing provisions, if so permissible, that may solve the problem once for all.”

80. “We, therefore, recommend that the Government should consider this aspect. If necessary, an expert Committee be constituted which can go into feasibility of establishing a Regulatory body for unaided / aided and recognized private schools in Delhi and recommend the changes that are required to be made in the existing law or to suggest separate legislation if that is required.”

Action Recommended

Permissible Annual Fee Hike

- It is an accepted fact that the Government announces a hike in DA from time to time and employees of unaided private schools are entitled for a similar hike. Annual increments too have to be given to the employees. The price-index also has its effects on other expenditure too. Therefore, if the Managing Committee is satisfied that a 10% hike is justified, then it should be allowed. Simultaneously, the restriction on collection of capitation fee provided under RTE may also be incorporated in the DSEAR '73.

Use of Technology for Transparency

- To bring transparency in the accounting system of private unaided schools, the Review Committee recommends setting up of websites on which all details would be put up for all stakeholders to see. If there is a mismatch between the fee collection and expenditure incurred under various Heads, exception reports would be flashed. (Details are provided in the chapter of Section 18).

Committee for Regulation of Fee

- In compliance with the directions of the Delhi High Court in the above mentioned court case,(2011) the Review Committee explored various options for establishing a system for Fee Regulation. It considered the Acts of various states to resolve this vexed issue. It would be legally and administratively appropriate to set up a Committee for the purpose of determination of the fee for admission to any course of study in a private recognized school on the lines of the Tamil Nadu Schools (Regulation of Collection of Fee) Act, 2009. This aforesaid Tamil Nadu Act was challenged before the Madras High Court as well as before Supreme Court of India. Both the Courts upheld the validity of this Act, (except Section 11 which empower the district committee to make searches and inspect the record of schools, and dismissed other pleas made by unaided private schools.)

- The Review Committee feels that the matter relating to fee fixation needs to be dealt with under a separate Act as was done in Tamil Nadu. It would be worthwhile to adopt the aforesaid Tamil Nadu Act for the purposes of regulation of fees in private recognized schools in Delhi with suitable modification. It was informed to the Review Committee that over 6000 cases in the Tamil Nadu have been disposed off in the last few months by the Fee Regulation Committee under the said Act. Further, the State of Maharashtra has also followed the Tamil Nadu Act on fee regulation with modifications as per their needs. Since, the Chairman of the Fee Regulation Committee in Tamil Nadu Act is a Retired Judge of High Court, all orders passed by Fee Regulation Committee are generally accepted by the schools. The State of Maharashtra has constituted the Fee regulatory Committees on two-tier system, one at Divisional Level, headed by the District Judge and other at State level, headed by the Retired High Court Judge. The Review Committee felt that in view of compact geographical structure of Delhi, only one Fee regulatory Committee at State level would be sufficient.
- The Review Committee has considered the comparative structure of the Fee Regulation Committee under the Tamil Nadu Act and recommends the structure for Delhi to be as follows: -

Fee Regulation Committee under the Tamil Nadu Act	Fee Regulation Committee under the proposed Legislation for Delhi
a. Retired Judge of High Court- Chairman; Director of School Education	Retired High Court Judge- Chairman b. Director of Education or his nominee;
c. Director of Elementary Education	Chief Engineer (PWD) or his nominee;
d. Joint Chief Engineer (Building) PWD Finance Department	Controller of Accounts to be nominated by
e. Additional Secretary (Education)	

- For this purpose, a separate legislation on the lines of aforesaid Tamil Nadu Act has been drafted and a copy of the draft Bill is annexed with this Report as Annexure 13 in Volume-III.
- Schools desirous of hiking the fee would need to justify their case before the proposed Fee Regulation Committee and if a school is allowed to hike fees, another hike would not be allowed for another three years normally.

Regulation of fee of all Schools upheld by Apex Court

- Private unaided schools particularly Minority Schools may resist the setting up of Committee for Fee Determination but in the light of the observations of Hon Court in Islamic Academy's case and the upholding of Tamil Nadu Act, 2009 on fee regulation, the resistance can be met. As far as minority institutions are concerned, the Supreme Court in Islamic Academy's case (2003) held that——

“The right of the minorities to establish an institution of their own choice in terms of Clause (1) of Article 30 of the Constitution of India is recognized; so is the right of a citizen who intends to establish an institution under Article 19 (1) (g) thereof. However, the fundamental right of a citizen to establish an educational institution and in particular a professional institution is not absolute. These rights are subject to regulations and laws imposing reasonable restrictions. Such reasonable restrictions in public interest can be imposed under Clauses (6) of Article 19 and regulations under Article 30 of the Constitution of India. The right to establish an educational institution, although guaranteed under the Constitution, recognition or affiliation is not. Recognition or affiliation of professional institutions must be in terms of the statute.

The right to administer does not amount to right to mal-administer and the right is not free from regulation. The regulatory measures are necessary for ensuring orderly, efficient and sound administration. The regulatory measures can be laid down by the State in the administration of minority institutions.”

- This view was re-inforced in the 9-bench judgment in the matter of PA Inamdar Vs State of Maharashtra where in Hon’ble Apex Court observed that—

“138.....That every institution is free to devise its own fee structure but the same can be regulated in the interest of preventing profiteering. No capitation fee can be charged.....”

- On Fee Regulatory Committee as proposed by the Hon’ble Apex Court in the Islamic Academy case, the Hon’ble Apex Court in PA Inamdar’s case held that the Fee Regulatory Committee is permissible under article 30 and article 19(1)(g). It thus held that fee-regulation could be done even in respect of minority institutions. Its observations were-

“ The two committees for monitoring admission procedure and determining fee structure in the judgment of Islamic Academy, are in our view, permissible as regulatory measures aimed at protecting the interest of the student community as a whole as also the minorities themselves, in maintaining the required standards of professional education a non-exploitative terms in their institutions. Legal provisions made by the State Legislatures or the scheme evolved by the Court for monitoring admission procedure and fee fixation do not violate the right of minorities under Article 30(1) or the right of minorities and non-minorities under Article 19(1)(g). They are reasonable restrictions in the interest of minority institutions permissible under Article 30(1) and in the interest of general public under Article 19(6) of the Constitution”.

- Minority schools may also claim that judgement in TMA Pai case* (11 judge bench) cannot be over-ruled by the Islamic Academy** (5 judge bench) and PA Inamdar*** (7 judge bench). The answer to this it that the Islamic Academy judgment and the Inamdar judgment are clarificatory in nature and have to be read as such. The Constitutional Benches in PA Inamdar case and the Islamic Academy’s case, was constituted for the purposes of interpretation of TMA Pai’s Judgement. Hon’ble Court observed—

“in our considered view, on the basis of judgment in Pai Foundation and various previous judgments of this Court which have been taken into consideration in that case, the scheme evolved of setting up the two Committees for regulating admissions and determining fee structure by the judgment in Islamic Academy cannot be faulted either on the ground of alleged infringement of Article 19(1)(g) in case of unaided professional educational institutions of both categories and Article 19(1)(g) read with Article 30 in case of unaided professional institutions of minorities.”

- Therefore, the argument made before the Review Committee that fee regulation in the case of minority schools is in violation of judgment on TMA Pai’s case does not hold water. The Court in PA Inamdar’s case has specifically answered this question as under,-

“On, Question-4, our conclusion, therefore, is that the judgment in Islamic Academy, in so far as it evolves the scheme of two Committees, one each for admission and fee structure, does not go beyond the law laid down in Pai Foundation and earlier decisions of this Court, which have been approved in that case. The challenge to setting up of two Committees in accordance with the decision in Islamic Academy, therefore, fails”.

- The judgment of PA Inamdar's case is still being relied upon by the Supreme Court on these issues. Therefore, the Review Committee recommends the Government to make a new law on the lines of the Tamil Nadu Schools (Regulation of Collection of fee) Act, 2009 with certain modifications by constituting a Committee for determination of fee for admission to any standard or course of study in minority as well as non-minority private institutions.

[Renumbering of Sections

[The existing Section 17 has been renumbered as Section 25 and a new Section 26 has been inserted for prohibition of collection of capitation fee.

A draft Bill having short title "The Delhi Schools (Regulation of Collection of Fee) Bill, 2011" has been annexed.]

* AIR 2003 SC 355

** AIR 2003 SC 3724

*** (2005) 6 SCC 537

SECTION - 18 School Fund

RULES 146-180

This Section deals with how school funds, fees and other charges levied by private schools are to be maintained. Section 18(1) and (2) read with rule 146 to 156 deal with aided schools. Sec 18(3), (4), (5) read with rule 172-180 deal with unaided schools.

Rule, 159, 160, 168, 169, 170 are specifically for aided schools and are dealt in the chapter on Aided schools u/ Section 6 implying thereby that other rules are applicable to all private schools.

The accounts of aided schools are audited by the Government and these schools are till now were not required to submit their annual returns. The main issue to be considered pertains to Unaided Schools but may need to apply to aided schools if the new mechanism for rendering physical and financial returns on-line is accepted.

Issues Involved

Mandatory Provisions

- Under the existing Act every recognised unaided school has to submit audited financial records, incumbency of teachers, class-wise enrolment concessions etc. as per Appendix II by 31st July of every financial year. Under Rule 180 it is mandatory to examine these returns.

Dimension of the issue

- Presently there are nearly 1300 recognised private unaided schools in Delhi. Out of these nearly 70% school send the requisite documents in time but there are others which need to be reminded about performing this mandatory requirement. It was been found that the quality of returns filed is of varying standard: hand-written, typed, haphazard, and incomplete even skimpy. There is no consistency either.
- Since there is always a shortage of man power in district offices is little done by way of examining this important aspect. The Education Officers are not trained to undertake financial scrutiny and most of them lack competency to identify the shortcomings based on a plethora of papers submitted by each school, particularly as the same officials are predominantly engaged in dealing with Government schools which require intense supervision as a direct responsibility.

Action Recommended

Use of Technology to Enhance Transparency

- It is often alleged that schools are engaging under-qualified and under-paid teachers which affects the quality of education imparted to the children of the school. They fudge financial returns and there is no transparency about facts a parent would like

to know. It was suggested that all the recognised schools may be asked to fill up two proformas on-line. This suggestion was acceptable to the Review Committee but its workability was got tested independently. This was done using financial experts and consulting IT experts on the feasibility of getting this done on line with the added requirement that the new system be capable of generating exception reports so that the scrutiny is focused and meaningful.

- Proforma-I (Part-1 of Annexure-14 in Volume-III) may include physical features of school like enrolment, number of Sections, number of teachers with their qualifications. This information would be available on the school website and would be accessible to all stake-holders of the school. In case any wrong information about the number of teachers or their qualification is given, it would be pointed out by fellow teachers.

Scrutiny of School Finances

- As pointed out above the department has lagged behind in fulfilling its mandatory duty of annually examining the returns submitted by private schools mainly due to the enormity of the data and lack of competency in scrutinising balance sheet etc. Moreover, in the absence of consistent follow-up the schools furnish information in varied formats and often with incomplete documents.
- Therefore, the schools should be asked to fill-up Proforma-II (Part-II of Annexure-14 in Volume-III) giving financial details. The schools can be asked to submit the hard copy of the documents with a duly signed certificate of having submitted the same. This may be followed by audited returns quoting the computer number. This is the practice followed by other regulatory and enforcement authorities.
- The website for filling up these Proformae has been so designed that any mismatch between physical and subsequent financial information is thrown up as exception reports, so obviating the need to do detailed scrutiny of every return.
- A suggestion was also received that the Chartered Accountants may henceforward be engaged from a panel prepared by the Government. The suggestion is a good one and while leaving flexibility with the schools to select any auditor from the panel but the availability of a panel would ensure professional capabilities of a generally level standard.

Assistance from Institute of Cost and Works Accountants of India for Two Years

- Whenever there are exception reports due to any mismatch, a preliminary examination may be got done by a Special Accounts Cell in each District which can take the assistance of Cost Accountants who have offered to do this free of cost for 2 years. This would be highlighted through exception reports.
- Serious cases of irregularities may be referred to Chartered Accounts on the Directorate's panel for in -depth scrutiny.
- Therefore, Rule 180 has been proposed to be amended to empower the Director to seek information/returns through online submission in the prescribed formats given in the Annexure-14 (Colly.). A new sub-Section (7) to Section-18 has been inserted and corresponding rules have been framed along with the three formats relating to general information, quantitative information and financial information of the school. The formats placed at Annexure-14 may be inserted in DSEAR '73 as Form-VI.

Engagement of Empanelled Chartered Accountants

- To have more transparency in the accounts of schools, on the analogy of the co-

operative societies, the Directorate of Education should draw up a panel of Chartered Accountants and the audit of each school may be entrusted by the management to any of the empanelled CAs. To enable this, appropriate provisions has been incorporated in Rule 180 of DSEAR '73.

Imponderables

- Small schools may face difficulty in filling up on-line data. However, this problem can easily be overcome by the Directorate engaging an outsourced agency which can help the schools fill the forms on nominal payment (as done for visa applications).
- Exception reports may get flashed due to wrong entry of data. However, such cases can be sorted out during preliminary examination by the Accounts Cell. Ordinarily, the computer will not accept incomplete data.

Positive Aspects

- There cannot be two opinions that the use of information technology for above can handle enormous data, efficiently. In fact, instead of examining all the financial returns, only a few hundred cases where mismatch occurs would need to be examined. This would ensure transparency but also act as a deterrent against giving wrong information.
- Availability of information like enrolment, number of Sections and qualification of teachers would allow stakeholders like parents to be satisfied about the school efforts to provide good infrastructure and teachers and would act as an impetus for managements to display their assets.
- The above proposals were supported by various associations too. No negative views were expressed by any person or Association. The Proformae were got prepared after intensive discussions by the Review Committee with a leading CA firm and the feasibility of running the programme was checked by the Institute of Cost Accountants. Both agencies can do a separate presentation for the Directorate of Education on the feasibility of implementing this strategy. Institute of Cost Accountants has undertaken to do the training and hand-holding free of charge for 2 years.

[Renumbering

The existing Section 18 has been renumbered as Section 27.]

SECTION - 19 Affiliation

Issues Involved

Different Terminology in DSEAR '73 and RTE '09

Section 19 relates to affiliation of schools for public examination. The word “middle” and “higher secondary” have been used for class VIII and class XIth. Under RTE '09 class VIII is referred as “elementary”. Moreover, school education is now up to class XII.

RTE '09: No Examination up to Elementary Level

- Sub-Section (3) and (4) refer to a public examination to be held for primary and middle classes, whereas under RTE '09 no public examination is to be held till elementary level.

Action Recommended

Harmonising the Terminology

- The words middle and higher secondary used in Section 19 may be substituted with the word “elementary” and “senior secondary” .

Omission of Sub-Section (3) and (4)

- Since no examination up to elementary level is permissible under RTE '09, therefore Sub-Section (3) and (4) may be omitted.

[Renumbering

The existing Section 19 has been renumbered as Section 28.]

SECTION - 20

Take Over of School Management

This Section empowers the Administrator to take over the management of any school if it has neglected performing duties imposed on it by or under this Act.

Issues Involved

- At present 10 schools out of a total 217 aided schools have been taken over by the Government. Out of these 9 schools are still with the Government for more than 5 years. Of these 2 are located on government allotted land and the rest are on privately owned land.
- Section 20 provides that the maximum period for which the management of a school can be taken over is 5 years. The Act is silent on the status of such a school if no management comes forward to take it back even if 5 years have elapsed.
 - The High Court in L.C. Gupta vs. UOI has held that after the expiry of 5 years, the Administrator becomes functions officio. So if any teacher or HOS is appointed by the Administrator after expiry of 5 years, such appointment would be illegal.
- Since the status of such schools remains unclear after the expiry of 5 years, the very purpose for which these were taken over gets defeated.
- It was reported that the buildings and other infrastructure in some of these schools is extremely poor but in the light of the direction of the High Court, the Government is unable to improve things.
- Due to the above directions of the High Court, even appointment of teachers cannot be done in these schools which impacts on the studies and the educational outcomes.

Action Recommended

- Section 20(1) may be amended to the extent that in case no genuine management comes forward to take responsibility for running the school after the expiry of five years, then the school should be run like a government school and the salaries and other terms and conditions of employees including teachers shall be protected and will remain applicable to them even after takeover. Hence they would have the option (subject to qualifications and experience) to join a special pool of teachers or to be governed by different conditions but not detrimental to their original terms of appointment or to resign.
- It is proposed that simultaneously administrative action may be initiated as follows:-
 - If the school is on a Government allotted land, the land and assets may be restored to the government and the school converted for all purposes into a Government school. Salaries of teachers would be as suggested in the paragraph above.
 - If running the school is uneconomical, the pupils may be relocated to other schools.
 - In case the school is located on private land, compensation amount may be

calculated on the basis of depreciated value given in the audited accounts. This compensation amount may be released after determining who the rightful claimants are. The onus of proving the legal claim may be placed on the claimants.

This requires a policy decision in consultation with DDA/local body. Hence the Suggestions have not been taken forward in the legal formulation of the proposed changes in the Act & Rules in Volume II.

Positive Aspects

- If there is clear provision that the school would be run like a Government school even after expiry of 5 years, it would become possible to fill up vacancies in these schools. This would improve academic outcomes.
- Government will be able to pay for repairs of dilapidated buildings which are hazardous for children. If the school becomes Government property, the children can be moved to other schools until the buildings are restored and the infrastructure improved.
- The present position of the stalemate when a school is taken over because of mismanagement but where the cure is worse than the disease would be overcome.
- The teachers can continue without affecting their terms of appointment but cannot automatically claim the status of Government teachers.

[Renumbering

Section 20 is renumbered as Section 29.]

SECTION - 21

Section 20 Not to Apply to Minority Schools

This Section provides that a minority school cannot be taken over under Section 20. This provision re-iterates the fundamental right available to the minority community under article 30 of the Constitution of India for establishment and administration of an institution.

[Renumbering]

Since this Section protects the rights of minorities, no change is suggested. However, this Section is renumbered as Section 30.]

SECTION - 22

Delhi School Education Advisory Board

RULES 186 -189

This Section deals with the constitution of Delhi Schools Education Advisory Board (DSEAB) for the purpose of advising the Administrator on matters of policy relating to education in Delhi.

Issues Involved

Provisions under RTE '09 and DSEAR '73

- RTE '09 provides for constitution of State Advisory Council (SAC) under Section 34. The function of this Council is to advise the State Government on matters of education. The function of Delhi School Education Advisory Board (DSEAB) under DSEAR '73 is also to advise the Administrator on matters of policy relating to education.

Difference in the Two Roles

- The role of State Advisory Board is to advise on matters of education up to elementary level while that of DSEAB is to advise on matters of policy up to Senior Secondary level.
- Thus there might be overlapping in the functions of SAC and DSEAB up to elementary level of education.

Action Recommended

- Since the role of SAC is mainly confined to the implementation of RTE '09 and the DSEAB has to deal with over all aspects of policy under DSEAR '73, it is proposed that the DSEAB may retain its identity. In the past some major issues that were discussed by DSEAB were –
 - Land Norms
 - Admission Criteria for entry level in private schools
 - EWS admissions
 - Public Schools running in the premises of aided schools.

Therefore, no change is suggested in this Section.

[Renumbering

Section 22 is renumbered as Section 31.]

SECTION - 23

Delegation of Powers

This Section deals with the delegation of powers by the Administrator to the Director or any other officer.

Issues Involved

Nil

Action Recommended

No changes suggested in this Section except that the term 'Administrator' is replaced by the term 'Government' in view of changed administrative setup.

[Renumbering

Section 23 is now renumbered as 32.]

SECTION - 24 Inspection of Schools

RULES 190 -194

This Section deals with an important aspect of schools i.e. inspections. The purpose of inspections for from being a fault finding exercise, is to provide guidance for proper upkeep of the schools be it on academic, administrative or financial fronts.

Issues Involved

Number of Schools too Large

- Under the existing provisions of sub-section (1) of Section 24, every school has to be inspected at least once in each financial year. Today, the total number of private schools (Aided and Unaided) is approximately 1500. This huge number precludes the feasibility of complying with this provision.
- As per the information received from Director (Education) MCD inspection is regularly carried out in respect of MCD run schools and aided schools (which are 44 in number). The recognised unaided schools were not being inspected frequently due to shortage of staff although circulars have been issued to carry out the inspections of unaided recognised schools on regular basis.

Number of Schools vs. Available Staff

- The distribution of private (aided and unaided) schools shows that there are over 100 or even more than 200 schools in each district except in North and New Delhi districts of Delhi. This is brought out in the tables and charts given below:

Table 1 : Number of Unaided Schools under Delhi Government

District	No. of Schools
East	138
North East	232
North	24
North West	264
West	235
South West	215
South	117
New Delhi	13
Central	28
Total	1266

Table 2 : Number of Aided Schools under Delhi Government

District	No. of Schools
East	14
North East	8
North	46
North West	11
West	20
South West	16
South	18
New Delhi	22
Central	60
Total	215

- The staff strength of education staff available in each district comprises only of one Deputy Director and one Education Officer for each zone. These officers are already loaded with onerous responsibilities of supervision of Government schools. The ministerial staff are posted by the Government of Delhi's Services Department and it is a well-known fact that most staff members consider a posting in the Education Department as unattractive compared with Departments having large public interface. Hence except for a handful, most staff members do not give as much support as the situation demands. They are not well-versed in modern management and can be of little help to the Education officers. In such an environment when the first call of duty is to run the schools for which Government is directly responsible, the inspection of private schools is neither feasible and nor can it be undertaken with the degree of sincerity and professionalism that is required .

Inspection Form Needs Modification

- The existing form V under DSEAR '73 is too lengthy and impractical. Over the years its utility has remained confined to merely filling it up in a monotonous manner, something which is left to the schools to fill up, in most part.

Utility of Inspection

- The purpose of inspections is fulfilled only if the findings can be brought to a logical conclusion in a time bound manner. Often when a school is asked to rectify the deficiencies noted, the resulting correspondence continues for more than one year and thus the whole impact is lost. There is every need to consider different ways of conducting inspections as this requirement alone can ensure that the teaching and learning progression is satisfactory and schools that are deficient are told how to improve themselves. The Review Committee tried to ascertain school inspection models which are being used elsewhere. The Committee's attention was drawn to the Office of Standards in Education, Children's Service and Skills (OFSTED) Model which has been introduced in the UK which is discussed below. It is just one of the ways of undertaking school inspections and certainly there would be examples which might be better suited for the conditions operating in Delhi. But a discussion could start looking at the OFSTED model described below.

The OFSTED Model of School Inspection in the U.K.

- The note at Annexure 8 in Volume-III describes a simple school inspection system which has been introduced in England under Section 5 of their Education Act 2005 w.e.f. September 2009. The note at Annexure-8 describes how the general principles and processes of school inspection should be undertaken for all kinds of schools in England and sets out the statutory basis for inspection; it summarises the need for purposeful inspection, its scope and key features. It indicates the legal requirements for the inspection of schools, the timing of such inspections, the principles of inspection, the relationship between schools and the evaluators and the benchmarks used by the inspectors when they award grades and also when in their judgement the performance of a school is judged to be inadequate. The focus of school inspections is based largely on first-hand observation. The school inspection reports provide a written commentary on the quality of teaching and its impact on learning; also the school management's capacity to improve.
- It provides parents with information which informs the choices and preferences about the effectiveness of the schools their children attend or may attend in future. It provides the Education Department and the Parliament (it is a law for the whole country)

informed about the working of the schools. It provides an assurance that minimum standards are being provided and the confidence that public money (and parents' money) is being used properly. It promotes the improvement of individual schools by indicating the criteria used for demonstrating the standards of performance and effectiveness expected.

Transformation of Approach to School Inspections

- In the OFSTED model there is an evaluation of the achievements and the wider well-being of pupils as a whole, including those most at risk that have to be given the opportunity to succeed. (This change in ethos will become very necessary as the EWS children start moving into higher classes.) OFSTED Inspectors spend a high proportion of time on on-site inspection in the classroom. They assess how well school programmes promote equality of opportunity and how effectively they tackle discrimination. They check procedures meant for safeguarding children and young people from harm. They look at the engagement of head teachers, school staff and managements in the process of inspection so that they understand the judgements (inspection report assessments) made.

Action Recommended

The Number of Schools Vs. Available Staff

- Since the number of private schools has grown exponentially in Delhi and the number of education staff has not increased commensurately, instead of specifying the number of inspections to be conducted each year, a separate Chapter should be enacted under the new Act, providing for inspections to be conducted through accredited agencies. The process of accrediting agencies that employ the right blend of teachers and educational administrators to conduct inspections, the question of financing the conduct of annual inspections, the requirements and formats to be used would need in-depth study. Once the Reports are found acceptable by the Directorate of Education as per the responsibilities given to the Accredited Agency the Inspection Reports would need to be "owned" by the Government tabled in the Assembly and displayed on the website. This activity is bound to gain public visibility which would give a meaning and a stature to inspections. More importantly the outcomes and the bench-marks used would be available for everyone to see which would promote healthy competition between schools and intra the school among the teachers.

Inspection Forms

- At present DSEAR '73 has prescribed Form V which has been replaced by a form evolved by the Department of Education which has been in force through executive orders for some years. The form is at Annexure 15 in Volume-III. The latter form lays emphasis on those aspects like checking the continuance of children admitted under EWS quota, the availability of Fire Safety Certificate and administrative aspects like the observance of office procedure and service matters. This form could be continued temporarily although its utility appears unrelated to teaching and learning outcomes of children which should be the most important concern. Although the Review Committee has recommended this inspection form and put it in the schedules, the Committee has the opinion that the time is opportune to rework the system and set up a group of educationists to consider the concept and approach of the OFSTED model of UK or a better model if it can be located to be modified to suit conditions here. This is discussed below.

OFSTED Model

- In Delhi the concept and approach of OFSTED could be used in the following ways:
 - It would be necessary to bring those ideas under the ambit of the Delhi School Education Act when it is amended or to formulate a separate legislation.
 - Since the normal staff of the education department are unlikely to get time or acquire the capacity to visit so many private schools, in addition to supervising and inspecting the government schools for which they have direct responsibility, a new approach should be tried. More facts can be ascertained from the website of OFSTED and a group of educationists and a professional Agency may be asked to design an RFP (Request for Proposal) seeking agencies who can be accredited and can undertake inspections that go into aspects that are most relevant for improved learning outcomes. Even if this activity is outsourced to one or more accredited agencies, a senior staffing structure for providing oversight and for analysing the Reports would be needed. Only then can Government own the reports and bring in correctives from time to time.
 - Like many other professional organisations fees can be levied on the schools for conducting inspections as it would not be possible for Government to bear large-scale recurring charges of professional inspections on a continuous basis. A fresh RFP can be issued every 3 years to promote transparency and avoid any nexus building up.
 - In case the Government considers adopting the OFSTED-like model, enabling provisions have been made in Rule 190 of the DSEAR '73 to empower the Director to engage expert agencies having experience in the field of inspection and accreditation to carry out inspections under Section 24 of the DSEAR '73.

[Renumbering

Section 24 is renumbered as Section 33.]

SECTION - 25-26

Jurisdiction of Civil Court and Protection of Action Taken in good faith

Section 25 deals with barring of jurisdiction of civil courts and Section 26 deals with protection of actions taken in good faith.

Issues Involved

Nil

Action Recommended

- No change is proposed in these Sections. However, the word “Administrator” may be substituted with the word “Government” as already explained.

[Renumbering

Section 25 is renumbered as Section 34 and Section 26 may be renumbered as Section 35.]

SECTION - 27

Liability of Manager to Punishment

This Section provides for liability of Manager to be punished for failing to carry orders made by Tribunal, presenting students for any public examination without complying with the provisions of Section 19 or failing to deliver school property in case the school is taken over under Section 20.

Issues Involved

Existing Penalty Provisions too Harsh

- During discussions with several respondents, the Review Committee observed that though there are sufficient provisions under the Act for regulation of school education in Delhi, but, there was no statutory framework under the Act for enforcing the regulatory directions, except through stoppage of aid or withdrawal of recognition or taking over of the school. Understandably all three alternatives are rarely if ever exercised, because such measures have an adverse impact and primarily on the children attending the school or teachers employed there. There is a need to institute penalties that would be effective in dealing with recalcitrant managements that wilfully flout the orders/directions/requirements laid out in the act and Rules in a manner that is prompt and effective..

Typical Violations

- Officers of the Education Department recounted the following violations which occurred on a regular basis.
 - Violation of directions regarding EWS admissions;
 - Non-submission of annual returns as prescribed under the Act.
 - Shifting of schools from one locality to the other;
 - Transfer of school funds to the parent Society;
 - Violation of admission procedures laid down for pre-school admissions;
 - Charging of additional amounts over and above prescribed heads of fee;
 - Non-payment of full salary to employees;
 - Starting of a new unaided school within the premises of an aided school.

Views of the Directorate's Officers

- The officers felt that these violations are grave but do not warrant withdrawal of recognition and the use of other severe measures, but if ignored, these violations create a general perception that the Directorate is not fulfilling its responsibilities leaving the Management free to harass parents and employees.

Action Recommended

Providing Statutory Framework

- The provisions of the Act and Rules were examined by the Review Committee. It was noticed that the penalties provided in Section 24 (4) 13of the Act can be invoked by the Director only if any irregularity or deficiency is found at the time of inspection or otherwise. Section 27 of the existing Act provides for imposition of penalty on the Manager only under 3 situations: – (i) In case he omits or fails to obey the orders of Tribunal, (ii) present any student for any public examination without complying with provisions of Section 19, or (iii) Omits or fails to deliver any school property to the Administrator or any authorized officer under Sub-Section (2) of Section 20. Thus this Section serves only a limited purpose.
- In view of above, it was proposed that there should be a statutory framework for compliance of directions to secure effective implementation of the provisions of the Act and Rules. In case there is violation of directions, financial penalties need to be imposed after following a prescribed procedure of giving a notice etc.

Comparative Situation in Other Regulatory Authorities

- The Review Committee took note of the provisions of the Delhi Professional Colleges or Institutions (Prohibition of Capitation Fee, Regulation of Admission, Fixation of Non-Exploitative Fee and Other Measures to Ensure Equity and Excellence) Act, 2007. In the said Act, under Section 17, there are provisions for issuance of directions by the Government or any other officer specially empowered in this behalf by the Government. A provision has also been made under Section 18 of that Act for imprisonment for a term not exceeding three years or fine which may extend to Rs. 1 crore, in case of violation of the directions issued under Section 17. Section 19 provides for compounding of offences provided under Section 18.
- It was the unanimous view of the Review Committee that a similar provision may be provided in the DSEAR '73 so that the regulation of school education is strengthened and the school is deterred from making violations and when these come to notice they can be stopped effectively. This would strengthen the faith of general public that violations of the Act and Rules would not be taken lightly and can be dealt with by the Directorate. The stricter provisions of the law relating to closure etc. are ineffective unless intermittent misconduct is dealt with promptly. Therefore a provision needs to be inserted in Section 27 of the Act making the Manager of the school liable if he omits or fails to comply with the directions of the Director or any other authorised officer. Accordingly the penalty provision in the case of schools has been suggested to be enhanced to Rs. 50,000/- which may be compounded under the proposed Section 40 to escape criminal action against the officer/ management. If they fail to respond, the Director can initiate criminal action by filing a complaint before the competent court. As far as imprisonment is concerned, under Section 27 of the DSEAR '73 imprisonment for 3 months imprisonment or with fine which may be up to Rs.1000/ is provided for. The enhancement of this amount has already been discussed while dealing with the Tribunal in Section 11 and is not repeated here.

Modification of Section 27

- In view of the above, necessary modification/amendment would be needed in Section 27 to add a sub-Section that a Manager will be liable for punishment if he fails to carry out the directions issued by the Government or any other officer empowered by it .

Imponderables and Risks

- There may be resistance from Managements of private schools because they would not be able to ignore directions to start or stop certain activities.

Positive Aspects

- These amendments would provide a statutory framework for enforcing the regulatory aspects where needed.
- The hands of Government would be strengthened and it would become possible to bring transgressions of private schools to a logical conclusion. A provision for issue of a show- cause –notice has also been included. Appeals against the orders of the Director may lie to the Government. In most States cases are handled on file by the Education Department and orders of the Minister-in- charge obtained where specified.
- In most cases of transgression, Managements would need to abide by the directions of the Director. This would be welcomed by managements that feel frustrated with what is seen as apathy on the part of the Government/ Directorate in dealing with schools that pay no attention to specified requirements which others follow. As appeals would lie to the Tribunal, it would reduce the number of court cases too.

[Renumbering

Section 27 is now omitted and in its place four new Sections from Section 36 to Section 39 are added.]

SECTION - 28-29

Power to Make Rules

Section 28 deals with powers to make Rules and Section 29 deals with power to remove difficulties.

Issues Involved

- Harmonising Section 28 with the proposed amendments in the other Sections and insertion of new Sections.

Action Recommended

- Section 28 is connected with the other Sections of this Act; therefore, the consequential changes have been incorporated in sub-Section (2) of this Section to incorporate the powers to make rules wherever provided in main Sections and proposed new Sections.
- In Section 29, the word “Administrator” may be substituted with the word “Government” as already explained in Section 2.

[Renumbering

Section 28 may be renumbered as Section 40 and Section 29 may be renumbered as Section 41.]