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**25% Reservation under the RTE: Unpacking the Rules in PAISA States**

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## 25% Reservation under the RTE: Unpacking the Rules in PAISA States

### 1. Introduction

In its landmark judgment on April 12, 2012, the Supreme Court upheld the Constitutional validity of the *Right to Free and Compulsory Education (RTE) Act, 2009*, which mandates a minimum of 25% free seats for children belonging to weaker sections and disadvantaged groups (EWS) in all private unaided primary schools. In particular, Section 12 (1)(c) of the *RTE Act* stipulates that the 25% reservation be implemented while admitting students to Class 1.<sup>1</sup> Given the salience of such provisions, deeper scrutiny is required on their nuances and the manner in which they are to be implemented: How will eligible children be selected? How will private schools be reimbursed for their expenditure? What additional provisions exist under the Act for children falling in these categories?

With a view to better understand the process of implementation of Section 12 of the *Act*, this brief describes the relevant provisions of the Act and Rules of the PAISA states, namely: Andhra Pradesh (AP), Bihar, Himachal Pradesh (HP), Madhya Pradesh (MP), Maharashtra and Rajasthan. In doing so, it provides an overview of the differences across states, highlighting the strengths and weaknesses of the state-wise provisions regarding implementation of the 25% reservation.

### 2. Maintenance of Records of Children

The *RTE Act* mandates that “[e]very child of the age of six to fourteen years shall have a right to free and compulsory education in a neighbourhood school till completion of elementary education.”<sup>2</sup> In accordance with Section 12(1) of the *Act*, it is from within this neighbourhood that each school is to admit children belonging to EWS. According to Section 12 (1)(c) of the *Act*, all specified category or private schools must reserve 25% of their seats for children belonging to EWS from the neighbourhood and provide them

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<sup>1</sup> Specifically, free and compulsory education must be provided to children between the ages of 6 and 14 years of age; private unaided religious/minority schools are exempt.

<sup>2</sup> *RTE Act*, Section 3.

admission from Class I onwards; wherever such a school provides pre-school education, these rules are to be applied to the pre-school section as well.

The State Government and/or Local Authority<sup>3</sup> is responsible for deciding the area or limits of the neighbourhood for each school (*RTE Act*, Section 6) and, according to the *RTE Rules* (2010), a primary school is to be located within 1km of each neighbourhood and an upper-primary school within 3km.<sup>4</sup> While most states have specified these limits, there are some inter-state variations.

For instance, in HP a primary school must be located within 1.5km of a neighbourhood and must have a minimum of 25 enrolled children between the ages of 6-11 years. In, MP however, no distance for primary schools is specified (only that it should be located in the village/ward, adjoining villages/wards of a given rural/urban area). In both Bihar and MP, there is a provision for the extension of the neighbourhood as identified by the State Government and/or Local Authority in case all the reserved seats are not filled,<sup>5</sup> yet they do not specify any other details of the extension.

### 3. Definitions of “Disadvantaged Groups” and “Weaker Section”

Before discussing the provisions in each state, it is useful to know how the terms “disadvantaged groups” and “weaker section” have been defined. Section 2, Clauses (d) and (e) of the *RTE Act* define these terms as follows:

**Table 1: Definitions of Disadvantaged Groups and Weaker Sections**

Disadvantaged Groups	Weaker Section
A “child belonging to disadvantaged groups” refers to “a child belonging to the Scheduled Caste, the Scheduled Tribe, the socially and educationally backward class or such other group having disadvantage owing to social, cultural, economical, geographical, linguistic, gender or such other fact, as may be specified by the appropriate Government, by notification” ( <i>RTE Act</i> , 2009, Section 2, Clause (d)).	A child belonging to “weaker section” refers to “a child belonging to such parent or guardian whose annual income is lower than the minimum limit specified by the appropriate Government, by notification” ( <i>RTE Act</i> , 2009, Section 2, Clause (e)).

<sup>3</sup> “Local Authority” refers to a Municipal Corporation, Municipal Council, *Zila Parishad*, *Nagar Panchayat*, *Panchayat*, or any other body which has (or is empowered to have) administrative control over the school (*RTE Act*, Section 2, Clause (h)).

<sup>4</sup> *Right of Children to Free and Compulsory Education Rules, 2010 (RTE Rules)*, Rule 6.

<sup>5</sup> *Bihar Rules*, Rule 7, Sub-rule 3; *MP Rules*, Rule 7, Sub-rule 3.

The Rules in Bihar and Maharashtra do not expand on the definitions given above. The *Himachal Pradesh Rules, 2011*, however, specify that those children who belong to a Below Poverty Line (BPL) SC/ST/OBC family or who are disabled would be considered disadvantaged.<sup>6</sup> MP and Rajasthan have similar definitions, which include: SC/ST children; the physically handicapped (up to 40% disabled in Rajasthan; more than 40% disabled in Madhya Pradesh); children belonging to families eligible under the *Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006*; and girls (in Rajasthan).<sup>7</sup> All children belonging to BPL families in HP, MP and Rajasthan are included under the “weaker section” category.

In comparison, the *Andhra Pradesh Rules, 2010*, are the most articulate, outlining the proportion of seats to be reserved for groups defined as disadvantaged and weak. The reservation for disadvantaged categories is defined as 19%, while that for weaker sections stands at 6%.<sup>8</sup> The following table shows a break-up of the reservation policies in the state according to sub-categories:

**Table 2: Reservation Policies under RTE in Andhra Pradesh**

Disadvantaged Groups - 19%	Weaker Section - 6%
<ul style="list-style-type: none"> <li>• Orphans, HIV-affected, disabled, special need, migrant &amp; street children: 5%</li> <li>• SC: 10%</li> <li>• ST: 4%</li> </ul>	<ul style="list-style-type: none"> <li>• OBC + Minorities + Other Castes (with per annum income less than Rs. 60,000)</li> </ul>

The *AP Rules* also stipulate separate practices and prioritise certain sub-categories while implementing reservation policies for private schools located in different areas. For instance, for reservation in schools located in “plain areas,” preference must first be given to orphans, HIV-affected children and disabled children. Thus only after these seats are exhausted, will seats for SC and ST categories be filled. Similarly, children belonging to weaker sections can then only be admitted once the seats for SC and ST categories have been filled. Correspondingly, in schools located in tribal areas, all ST children should be

<sup>6</sup> *The Right of Children to Free and Compulsory Education, Himachal Pradesh Rules, 2011 (HP Rules)*.

<sup>7</sup> *Rajasthan Right of Children to Free and Compulsory Education, 2010 (Rajasthan Rules)* and *Right of Children to Free and Compulsory Education Rules, 2011 (MP Rules)*.

<sup>8</sup> *The Andhra Pradesh Right of Children to Free and Compulsory Education, 2010 (AP Rules)*

enrolled first, followed then by SC children; the remaining seats (if any) would be filled by other categories.

#### 4. Maintenance of Records of Children

In order to facilitate the above process, the Local Authority is to maintain records of all children in its jurisdiction, by means of a household survey, and these are to be updated each year.<sup>9</sup> Each child's record must be kept from birth till 14 years of age and, among other things, must state whether the child belongs to the weaker section or disadvantaged group as specified under the Act.<sup>10</sup> However, not all State Rules in our sample states specify which authority is to maintain an updated list of children belonging to these two categories and which schools they attend (whether unaided, aided or specified category school). While in MP the responsibility lies with the *Jan Shikshak* or Cluster Resource Centre Coordinator (CRCC), in Rajasthan it lies with the Block Elementary Education Officer (BEEO). In HP, it is the School Management Committee (SMC) who is designated to send the list to the Local Authority. In the remaining three states, the Rules do not stipulate a specific post or official within the government system to track these children (only State Government or Local Authority).

#### 5. No Discrimination

In accordance with Section 8(c) and Section 9(c) of the RTE Act, the State Rules of all six states make explicit mention of the responsibility of the State Government/Local Authority and the private schools to ensure that EWS children are not discriminated against. The Bihar<sup>11</sup>, AP<sup>12</sup> and Maharashtra<sup>13</sup> State Rules provide an extensive list of discriminatory practices that children from EWS are to be protected from. These include: segregation of or discrimination against children of EWS in schools – whether in the classroom, in the playground, during mid-day meals, in the use of common drinking-water and toilet

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<sup>9</sup> *Bihar Rajya Muft evam Anivarya Shiksha Niyamaavali – 2010 (Bihar Rules)*, Rule 6. And *MP Rules*, Rule 6.

<sup>10</sup> *Ibid.*

<sup>11</sup> *Bihar Rules*, Rule 5, Sub-rule 4.

<sup>12</sup> *AP Draft RTE Rules*, Rule 5 Sub-rule 8.

<sup>13</sup> *Mahrashtra Rules*, Rule 5 Sub-rule 3.

facilities, or in the cleaning of toilets and classrooms. In MP<sup>14</sup>, private schools and teachers, on their part, are to prevent the discrimination of students from the EWS category in accordance with the above mentioned guidelines as well as to ensure that classes for these children are not held in a separate classroom or at separate timings.<sup>15</sup> In both MP and Rajasthan<sup>16</sup>, the State Rules guard against discrimination in entitlements and facilities such as textbooks, uniforms, library and ICT facilities, co-curricular activities and sports.

## 6. Entitlements for EWS Children

Along with provisions for protecting children against discrimination, the state guidelines of AP,<sup>17</sup> Bihar,<sup>18</sup> HP,<sup>19</sup> Rajasthan,<sup>20</sup> and Maharashtra<sup>21</sup> which have expounded the provision of 25% reservation, guarantee a list of entitlements to be provided to children from EWS. The state-wise list of entitlements is given below:

**Table 3: Entitlements for EWS Children**

Entitlement	Andhra Pradesh	Bihar	Madhya Pradesh	Maharashtra	Himachal Pradesh	Rajasthan
Textbooks	✓	✓		✓	✓	✓
Uniforms	✓	✓		✓	✓	✓
Writing material	✓	✓		✓	✓	
Special learning and support material	✓			✓	✓	
Library						✓
Information Communication Technology facilities						✓
Extra-curricular activities						✓
Sports						✓

<sup>14</sup> *MP Rules*, Rule 5, Sub-rule 3

<sup>15</sup> *Bihar Rules*, Rule 7, Sub-rule 1. *MP Rules*, Rule 7, Sub-rule 1.

<sup>16</sup> *Rajasthan Rules*, Rule 4, Sub-rule 3.

<sup>17</sup> *AP Draft RTE Rules*, Rule 6, Sub-rule 1.

<sup>18</sup> *Bihar Rules*, Rule 7, Sub-rule 2.

<sup>19</sup> *HP Rules*, Rule 5, Sub-rule 1.

<sup>20</sup> *Rajasthan Rules*, Rule 4, Sub-rule 1.

<sup>21</sup> *Mahrashtra Rules*, Rule 5, Sub-rule 1.

It is of interest to note that while the *MP Rules* include a ‘no discrimination’ rule in the provision of the above entitlements to EWS children in private schools, there is no explicit definition of what the children are actually entitled to.<sup>22</sup>

## 7. Recognition of Private Schools

In all states, all aided and unaided private schools, established either before or after the commencement of the *RTE Act*, are required under the *Act* to submit a self-declaration form to the designated authority,<sup>23</sup> who, after verification, issues the certificate of recognition to the schools. This form includes such information as date of establishment, enrolment status, status of infrastructure, details of teachers, as well as details of the neighbourhood area of the school. In AP, MP, Maharashtra, and Rajasthan, the designated authority is the District Education Officer (DEO), who receives the self-declaration after it has been submitted to the Block/*Mandal* Education Officer. In HP there is a distinction in the authorities for primary and upper-primary/elementary schools – Block Elementary Education Officer (BEEO) for the former and Deputy Director, Elementary Education for the latter. In Bihar, a district-level committee has been formed to grant recognition to schools (or not), comprising of the DEO, the District Education Superintendent (DES) and an officer of the rank of Sub-Divisional Magistrate; and the self-declaration form must be submitted to the DES, who is the Member-Secretary of the Committee.

Unlike in Rajasthan, all other states have laid down the process to be followed for granting recognition. Upon receipt of the self-declaration form of a school and its verification, the designated authority or its staff must conduct an inspection of that school within a stipulated period to check whether the norms and standards laid out in the Schedule of the *RTE Act* are being fulfilled. This time-limit ranges between one month in AP and three months in Bihar and Maharashtra.<sup>24</sup>

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<sup>22</sup> *MP Rules*, Rule 5 and Rule 7, Sub-rule 2.

<sup>23</sup> Schools established before the commencement of the *Act* are required to submit the self-declaration within three months of the commencement of the *Act* in all states except Bihar, where the limit is six months, and Rajasthan, where no time-limit is specified.

<sup>24</sup> The time-limit ranges from 30 days from the receipt of application in Andhra Pradesh, 45 days in Madhya Pradesh, and three months in Bihar, Himachal Pradesh and Maharashtra. There are no details mentioned in the Rajasthan Rules.

Once the designated authority is satisfied that all the conditions, norms and standards prescribed under the Act and the State Rules have been met, it shall issue a certificate of recognition. While in AP the norms under Sections 19 and 25 (concerning infrastructure and pupil-teacher ratio, respectively) are explicitly mentioned, this is not the case in other states, except Madhya Pradesh which only mentions Section 19. In all five states but AP, the certificate of recognition must be provided to a school that meets all the conditions and norms within 15 days of the inspection; in Andhra Pradesh, this period is 30 days. The list of these schools must also be put in the public domain.

In case a school fails to fulfil the norms, standards and conditions, it shall also be listed in the public domain, but will be given only a provisional certificate and must request another on-site inspection by the designated authority and/or its staff. While the validity of the provisional certificate is stipulated as six months in AP, it is not specified in the other states. Furthermore, while in AP the time period by when the school is required to fulfil the norms shall be mentioned in the provisional certificate, the remaining states shall have until March 31, 2013 to fulfil them. A school that does not apply for recognition within the period specified in the provisional certificate in AP or by March 2013 in the other states, shall cease to be recognised and the running of such a school shall be punishable under Section 18 of the Act.<sup>25</sup>

### ***Withdrawal of Recognition and Appeal***

A school which is found to violate any of the stipulated conditions and norms will be given a month to register an explanation. In case the explanation is not deemed satisfactory or none is received, the designated authority in AP and HP, and a Committee comprising of 3-5 members in MP and Maharashtra,<sup>26</sup> shall investigate the matter and submit a report with its recommendations for continued recognition or withdrawal of recognition; in Bihar it is the existing Committee that shall examine the matter. Based on the recommendations of

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<sup>25</sup>Section 18 (5) of the RTE Act stipulates that if a school operates without a certificate of recognition, it shall cease to function and shall be liable to pay a fine up to Rs. 1 lakh, and in case of continuing violations, a fine of Rs. 10,000 would be levied for each day that the violation continues.

<sup>26</sup> While no details of the Committee members are specified in the HP and AP Rules, the MP and Maharashtra Rules stipulate that the members be eminent educationists, civil society representatives, media persons, and Government representatives. In Bihar, there is no additional committee to the one described earlier.



the Committee/designated authority, an order shall be passed by the DEO granting or withdrawing recognition. In Maharashtra, there is an additional step that must be taken, which is that the State Commission for Protection of Child Rights or the Right to Education Protection Society must also make its own enquiries with the school authorities, after which the School Education Department must make the final decision.

## 8. Reimbursement for Reservation in Private Schools

In Rajasthan<sup>27</sup>, Andhra Pradesh<sup>28</sup>, Maharashtra<sup>29</sup> and Bihar<sup>30</sup>, the State RTE Rules outline similar policies for reimbursements. In Himachal Pradesh, however, the State RTE Rules notified in March 2011, make no mention of either the reservation policy or the basis on which reimbursements are to be calculated. As with the Central RTE rules, in Madhya Pradesh the latest rules makes no mention of the actual amount of reimbursement or how it is to be calculated, except to say that the reimbursements shall be made at the end of the academic session, starting from the academic year 2011-12.<sup>31</sup>

In the states of AP<sup>32</sup>, Rajasthan<sup>33</sup>, Bihar<sup>34</sup>, and Maharashtra<sup>35</sup>, the RTE rules recommend for per-child reimbursement to be determined on the basis of the total annual recurring expenditure incurred by the State Government, whether from its own funds (Line Department expenses) or funds provided by the Central Government on elementary education (SSA), with respect to all schools established, owned or controlled by the Local Authority. The total annual expenditure of the State Government is to be then divided by the total number of children enrolled in all such schools, to arrive at the per-child reimbursement, Thus, aided schools which receive grants to fund all or part of their

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<sup>27</sup> *Rajasthan Rules*, Part 3.

<sup>28</sup> *AP Draft RTE Rules*, Rule 9, Sub-rule 1.

<sup>29</sup> *Mahrashtra Rules*, Rule 8.

<sup>30</sup> *Bihar Rules*, Rule 8, Sub-rule 1.

<sup>31</sup> *MP Rules*, Rule 8.

<sup>32</sup> *AP Draft RTE Rules*, Rule 9, Sub-rule 1.

<sup>33</sup> *Rajasthan Rules*, Rule 9, Sub-rule 1.

<sup>34</sup> *Bihar Rules*, Rule 8, Sub-rule 1.

<sup>35</sup> *Mahrashtra Rules*, Rule 8, Sub-rule 2.

expenses from the State or Local Government are not included in the calculation for estimating total expenses incurred by the State Government.

The *RTE Act* mentions that reimbursements to private schools shall be based on the per-child expenditure only if the per-child expenditure incurred by the private school or the actual amount charged from the child by the school is higher.<sup>36</sup> If the per-child expenditure of the State is higher than the amount that is actually charged from the child by the private school, then the school shall be reimbursed the lesser amount. Within our sample, the rules of only one state, Rajasthan,<sup>37</sup> make explicit mention of this provision.

With the exception of Andhra Pradesh<sup>38</sup> and Rajasthan<sup>39</sup>, the State Rules of Bihar, MP and Maharashtra also do not include details of the committee responsible for estimating the per capita expenditure or the process for reimbursing the cost to private schools. In AP, the committee should comprise of Secretary Finance, Principal Secretary Primary Education, Secretary School Education, Commissioner and Director School Education and State Project Director for SSA. In Rajasthan, the committee should comprise of the Principal Secretary School and Sanskrit Education, Principal Secretary Social Justice and Empowerment, Principal Secretary Rural Development and *Panchayati Raj*, Secretary Tribal Area Development, Secretary Finance Department, Director Elementary Education and Commissioner/ Director SSA.

In both states, the committee is required to meet within three months after the commencement of the Act and thereafter every year in December to calculate the fee for the next academic session. Schools which are already under obligation to provide education to children on account of having any land building, equipment or other facilities provided either free of cost or at concessional rates are not be entitled for reimbursement. The reimbursement will be made directly, in the separate bank account maintained by the school in two installments during the academic year. First installment of 50% will be

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<sup>36</sup> *RTE Act*, Rule 12, Sub-rule 2.

<sup>37</sup> *Rajasthan Rules*, Rule 9, Sub-rule 9.

<sup>38</sup> *AP Draft RTE Rules*, Rule 9, Sub-rule 5.

<sup>39</sup> *Rajasthan Rules*, Rule 9, Sub-rule 3.

reimbursed in the month of September and balance will be reimbursed in the month of January<sup>40</sup>.

The school, shall in the month of July, submit the list of the students admitted in the school to the DEO for reimbursement to the school under Section 12 of the Act. The DEO shall verify (or shall delegate the verification of) the enrolment of the children before making the reimbursement of the first installment. He/she shall reimburse the final installment in the coming January again after verification of the enrolment of children and attendance of every child subject to a minimum of 80% attendance every month.<sup>41</sup>

## 9. Conclusion

From this brief review of the Rules in six states, it is apparent that while all State Rules outline provision of 25% reservation in all private-unaided schools, the definition of the category of EWS, their explicit entitlements and reimbursement policies tend to vary across states. Although inter-state differences are an expected, and indeed a necessary, consequence in a federal system, the varying levels of the articulation of this specific provision give root to ambiguity in the implementation of such provisions at the state-level. For instance, with regard to the definition of a neighbourhood, while some states have explicitly defined its meaning, other states such as MP have only loosely described what is meant by a neighbourhood, thereby leaving the definition of the area from which EWS children are to be selected, open to interpretation. Regarding the reimbursement policies as well, some states have extensively detailed the basis for calculation, the process of reimbursement and the actors involved in this process; in contrast, several others have limited their Rules to describing the procedure for calculating per-child expenditure. Therefore, in states where the process for reimbursement is not clearly spelled out (*e.g.*, Bihar, Maharashtra, HP), the manner in which such complicated provisions are to be implemented on the ground remains nebulous.

Thus, while inter-state differences are desired and expected with regard to specificities in the implementation of the *RTE Act* to suit the local context – particularly in aspects such as

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<sup>40</sup> *AP Draft RTE Rules*, Rule 9 Sub-rule 6 and *Rajasthan Rules*, Rule 9, Sub-rule 4.

<sup>41</sup> *AP Draft RTE Rules*, Rule 9 Sub-rule 7 and *Rajasthan Rules*, Rule 9, Sub-rule 7.

the definition of EWS as a category, the description of children's entitlements and the policies against discrimination – vagaries in the articulation or the expounding of essential provisions across states, however, presents a point of concern. In order for the *Act* to be implemented in its true spirit, at the state level, greater detail is required in the guidelines, on the roles and responsibilities of the officials, definitions of various terms and different processes by which this provision is to be governed. To this end, it is then important for state actors to take an initiative and make efforts to elucidate and expand on these provisions. Examples of states such as Andhra Pradesh and Gujarat must be followed, where the Rules have been drafted keeping in mind the local context. It is equally important for members of civil society to put pressure and make demands for clarity in the guidelines describing their implementation.

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