

FREE SEATS CONDITION IN DELHI SCHOOLS **COMMON SCHOOL SYSTEM CONTEXT IMPERATIVES AND POSSIBILITIES**

There have been several developments since Delhi High Court ordered enforcement of the free seats condition in Delhi schools. This note outlines from the legal context of this condition, which flows not from education law but from the Master Plan for Delhi, a different perspective on the issue.

Delhi Master Plan provisions for Common School System

The Master Plan for Delhi (MPD) sets out a schema for equal access neighbourhood schools, consistent with Common School System (CSS) (through parity for teachers, tuition-free education for all, integration of roles and a neighbourhood school plan) recommended by Kothari Commission, about which there is consensus.¹ The MPD CSS provides legal strength to this consensus since land in Delhi, irrespective of who owns or allots it, cannot be used in contravention of MPD under Delhi Development Act.

MPD essentially stipulates numbers of various levels of schools with population for which they are to be located and standards for buildings, playgrounds, parking, etc.² These provisions are designed to ensure adequate schools for all and mainly local population, a central principle of CSS, with further support from the lease condition requiring schools to not refuse admission to local students and, consistent with MPD provision for 25% housing for the poor in the local community, the condition for 25% free seats.

Free seats condition in context of MPD CSS

It is erroneous to connect the free seats condition to cheap land allotment (which arises from MPD (1962) assessment of urgency to develop schools) since equal access neighbourhood schools are mandatory under MPD CSS irrespective of price charged for school sites. The free seats condition can be connected only to CSS local enrollment objectives, also in view of Kothari Commission CSS recommendation of, ultimately, tuition-free education for all in neighbourhood schools. For integration in CSS the Commission recommended a well planned long-term approach, without which simplistic enforcement of free seats will not serve CSS goals, and under MPD also the free seats condition on its own has little meaning – if the poor are resettled faraway in violation of MPD they cannot benefit from it without personal travel / time costs and energy / environmental costs of increased traffic, if sites are mis-allotted / misused to encourage city-wide competitive enrollment then local, especially poor, students get left out, etc.

Counter-productivity of enforcing free seats in isolation

Developments following recent orders show attempts to enforce free seats in isolation are conflict-prone:

- Some schools have made their disinclination to teach the poor obvious, including in the Supreme Court. This position, contrary to the consensus on CSS, shows schools as a class in poor light, locks schools and poor students in conflict and drags other students into this with the suggestion that they will be burdened by the favour to the poor, even as the truth is that schools and their students that have benefited at cost of rights of local communities, especially (but not limited to) poor students.
- On behalf of the poor, the High Court has been approached on compliance and some organizations are getting students, such as in faraway resettlement colonies around which there are no or few private schools, to demand free seats. This demand, short of CSS education rights of those making it and possible to meet only by infringing rights of local students around schools elsewhere to which it is made, takes a beggarly position that reinforces the patronizing one being taken by some schools
- Most unfortunate is the authorities' response. What has happened is that GNCTD has been issuing essentiality certificates, upgradation permissions, etc, in violation of MPD CSS, both GNCTD and MCD have been running schools regardless of it, and DDA has been allotting sites and allowing their use in disregard of MPD. The lapses have been serious and now authorities appear to be trying to sweep them under the carpet, at the cost of allowing the free seats condition to become 'controversial' and, more significantly, disconnecting it from CSS on which there is consensus.

¹ Kothari Commission recommendations about CSS and neighbourhood schools are at Annexure-1

² MPD standards for schools are at Annexure-2

Enforcing free seats conditions with a view to progressive implementation of CSS

Extending enforcement of free seats in compliance of court orders to progressive implementation of CSS, besides being an imperative of planning law as well as of consensus in principle on CSS (also central to Education Bill discussions), can potentially provide elbow room to break the emergent deadlock in Delhi. Basic premises and imperatives and illustrative possibilities of this approach are outlined here:

- **Basic premises**
 1. Enforcement of free seats condition of land allotment must further the objectives of the statutory land use provisions for CSS from which it flows
 2. Exclusive dialogue between select schools and some authorities must give way to one involving all CSS parties, especially the aggrieved, viz, communities including, but not limited to, the poor
 3. City-wide / school-centric attempts must give way to area level / community-based ones, for which MPD provides a schema with legal basis for progressive implementation of CSS.
- **Imperatives / boundaries of flexibility**
 - (a) The courts have made it clear that the free seats condition for land allotment cannot be violated. Likewise, land allotment conditions for local enrollment, type of school, etc, cannot be violated.
 - (b) Land allotment conditions as well as other procedural regimes (eg, essentiality / upgradation permissions, taxation categorization, etc) must also conform to MPD and approved layout plans.
 - (c) MPD provisions govern land use and are mandatory irrespective of who owns or allots the land and all (including government) schools must conform to MPD standards for school sites.
 - (d) For the community (including, but not limited to, students and poor) MPD CSS benefits are entitlements, not open to modification or interpretation as favour by schools and/or authorities.
 - (e) For the community it is irrelevant who is responsible for MPD CSS violations and if individual violations are penalized or condoned, as long as entitlements are restored at community level.
 - (f) For public confidence in education providers authorities and schools can not be seen as being in any sort of 'nexus' about denial of CSS entitlements of the community.
- **Illustrative possibilities³**
 - (1) Legitimate flexibility is possible in matters currently seeing attempts to shirk legal obligations:
 - Instead of trying to simplistically 'adjust' the percentage of free seats to 20%, 15%, etc, flexibility could be worked out to ensure overall percentage / equivalent of 25% for the local community, with incentives and penalties for variations in individual cases.
 - Instead of 'alternatives' like separate classes for the poor after school hours at the whim of individual schools, options equivalent to 25% free seats could be formalized, especially in partnership with government schools, for progressive implementation of CSS.
 - Instead of fee hikes or government subsidies to 'finance' free seats, etc, differential fee for non-local and local enrollment could be considered in pursuit of statutory objectives of local enrollment underlying the CSS concept.
 - (2) Compliance of orders for free seats can be used to put in place mechanisms required by MPD / recommended by Kothari Commission for progressive implementation of CSS, such as for:
 - Area-based dialogue among all communities, schools and authorities for community-specific plans for compliance apropos free seats as well as for a plan for phased enforcement of CSS
 - Assessment of, besides free seats condition violations, connected MPD CSS violations with a view to rectifying their causes and for clarity in community-specific phased plans for CSS.
 - Partnerships for reducing differences among / ensuring necessary conditions in all CSS schools and also to explore possibilities for equivalents to 25% free seats in specific contexts.
 - Flexibility (within boundaries of area level MPD CSS imperatives) for protecting individuality of schools, which can also throw up innovations apropos free seats, besides for CSS.
 - Immediate commitments to (a) convergence of all school education interventions in a community in a common CSS plan, (b) time-bound implementation of local enrollment, and (c) starter initiatives for confidence building, eg, summer camps for poor students, etc.

³ Based on suggestions made in 2001 in a report for Vasant Kunj from where citizens' groups in flats, villages, old bastis and slums approached High Court in December 2003 for MPD CSS implementation

10.05. **The Creation of the Common School System of Public Education.** The main problem before the country is to evolve a common school system of public education which will cover all parts of the country and all stages of school education and strive to provide equality of access to all children. This system will include all schools conducted by government and local authorities and all recognized and aided private schools. It should be maintained at an adequate level of quality and efficiency so that no parent would ordinarily feel any need to send his child to the institutions outside the system, such as independent or unrecognized schools. This is the goal which the country should strive to reach and a number of steps will have to be taken for its early realization.

- (1) The first is to ensure that the undesirable discrimination that now exists between teachers working under different managements – government, local authority and private organizations – should be done away with. This has been discussed more fully elsewhere and
- (2) The ultimate goal should be to provide tuition-free education at the school stage. From this point of view, tuition fees will have to be abolished in a phased programme – fees at the primary stage being abolished at the end of the Fourth Plan and those at the lower secondary stage by the end of the Fifth Plan. This has been discussed more fully elsewhere.
- (3) The roles of local bodies and private organizations in school education should be properly integrated with those of the State Governments to ensure that the minimum conditions necessary for the successful working of educational institutions are provided in every institution within the common system of public education, irrespective of its management. For instance, every such institution should be intimately involved with its local community. Each should be regarded as an individuality and given adequate freedom. A continuous attempt should also be made to develop each school to the best extent possible in accordance with a plan to be prepared and implemented jointly by the management, parents, teachers and students, and the Department; and every institution should be assured of adequate financial support to discharge its responsibilities to its student body.
- (4) The neighbourhood school plan should be adopted as a step towards eliminating the segregation that now takes place between the schools for the poor and the underprivileged classes and those for the rich and the privileged ones.

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10.19. **The Neighbourhood Schools.** We drew attention earlier to the social segregation that now takes place in our primary and secondary schools and pointed out that such segregation should be eliminated if education is to be made a powerful instrument of national development in general, and social and national integration in particular. From this point of view we recommend the ultimate adoption of the 'neighbourhood school concept' first at the lower primary stage and then at the higher primary. The neighbourhood school should be attended by *all* children in the neighbourhood irrespective of caste, creed, community, religion, economic condition or social status, so that there would be no segregation in schools. Apart from social and national integration, two other important arguments can be advanced in support of the proposal. In the first place, a neighbourhood school will provide 'good' education to children because sharing life with the common people is, in our opinion, an essential ingredient of good education. Secondly, the establishment of such schools will compel the rich, privileged and powerful classes to take an interest in the system of public education and thereby bring about its early improvement.

10.20 We are of the view that the neighbourhood school concept should be adopted as a long term goal, to be reached in a well-planned programme spread over the next 20 years. The strategy for its adoption is as follows:

- (1) During the next ten years, two programmes should be pursued side by side. The first is to improve all primary schools to a minimum level prescribed and to raise about ten per cent of them to a higher standard of quality.
- (2) Simultaneously the neighbourhood school system should be introduced at the lower primary stage, as a pilot project, in a few areas where public opinion is favourable to the acceptance of the proposal.

Excerpts from revised MPD-2001 relating to provisions and standards for schools

"Norms have been worked out for the provision of adequate educational facilities at various levels considering the age-group projections and other relevant considerations. In Primary and Secondary schools and colleges, separate norms for reservation of playfield areas in the schools have been given which must be indicated in the detail layout plans. In case of low-income communities, the space for Nursery school shall be utilized for crèche which could be run by public, private or voluntary agencies. Specific areas have been reserved for city level integrated schools to accommodate central schools and public schools. Planning standards for educational facilities are given below:

(a) Pre-primary, Nursery school – 1 for 2500 population	
Area per school	0.08 ha
Pre-primary / Nursery school to be located near a park	
(b) Primary School (Class I to V) – 1 for 5,000 population	
Strength of the school	500 students
Area per school	0.4 ha
School building area	0.20 ha
Play field area with a minimum of 18m x 36m ...	
(c) Senior Secondary School (VI to XII) – 1 for 7500 population	
Strength of the school	1000 students
Area per school	1.60 ha
School building area	0.60 ha
Play field area with a minimum of 68m x 126m ...	
(d) Integrated school without hostel facility (Class I to XII) – 1 for 90,000 to 1,00,000 population	
Strength of the school	1500 students
Area per school	3.50 ha
School building area	0.70 ha
Play field area	2.50 ha
Parking area	0.30 ha
(e) Integrated school with hostel facility – 1 for 90,000 to 1,00,000 population	
Strength of the school	1000 students
Area per school	3.90 ha
School building area	0.70 ha
Play field area	2.50 ha
Parking area	0.30 ha
Residential, hostel area	0.40 ha
(f) School for handicapped – 1 for 45,000 population	
Strength of the school	400 students
Area per school	0.50 ha
School building area	0.20 ha
Play field area	0.30 ha

मास्टर प्लान क्रियान्वयन सहयोग समूह

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