

## **A suggested protocol for ensuring retention of vulnerable children and for bridging OOSC and child labourers to re-join the mainstream.**

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### **1. Introduction**

The RTE Rules need to develop **two separate protocols**:

**1.1 Preventive protocol:** This is for dealing with children who are already in school from 1<sup>st</sup> std to 10<sup>th</sup> Std., and for those who get enrolled, or should get enrolled, in future in the 1<sup>st</sup> standard, but who may stay away from school without '**excused absence**'\* for more than **three days** in the future. This protocol should address these vulnerable children, **before they become drop-outs or at the first signs of their becoming drop-outs (maximum three days of absence from school without excuse – norm in other countries)**. The current definition of drop-out is 90 days. This should be changed to 3 days. This protocol is to ensure '**prevention of future drop-outs**' and **the ensuring of the fundamental right to education of all children without discontinuity**.

(\***Excused absence** is an absence from school of any enrolled student between the ages of six and 16 (or classes 1 to 10) which is included in the list of 'temporary excused absences' and which is supported by an appropriate written or oral excuse from the parent/guardian of the student. More details have been provided in a sample given to Ms Balasaraswathi.)

Without this preventive approach, we will continue to conduct bridging programmes forever. The aim of the above protocol should be to make future bridging programmes unnecessary because no child will have been allowed to become a drop-out for such stretches of time that they will need bridging. This approach is sadly lacking in the circular that has been issued on 5.06.10 which is premised on the assumption that there will be children who have not been attending school for more than five months! **Allowing children to remain out of school for such stretches of time is against their fundamental right to education guaranteed by RTE Act.**

**Most importantly, punishments need to be foreseen for concerned officials who fail to bring back children to school as per these protocols. As long as there are no punishments under the law, how do we hold anybody accountable?** In this context, we need to realize that a voluntary body like the SDMC cannot be punished for this, which is what is being envisaged in the latest rules regarding SDMCs. **It is significant that the education department does not have paid field workers such as those in the Health department, though education is as vital as health.** There should be a worker at the grassroots who is penalised for every child out of school or given incentives for each OOSC he/she brings back to school, like the grassroots health workers given incentives for each person he/she brings for family planning.

**1.2 Bridging protocol:** The second protocol should be for children who are currently out of school or already in a child labour situation who need bridging programmes. **(The circular of 5.06.10 serves this purpose.)** Bridging programmes should be for the limited purpose of mainstreaming **the current OOSC and child labourers and not an exercise in perpetuity.**

### **2. Attendance Authority**

For the implementation of both the protocols, **exclusive** Attendance Authorities (AA) (**other than HMs and teachers**, perhaps an ‘excess teacher’) for every GP area / urban ward (or a Secretary in each school) shall be appointed who will be responsible for the implementation of Sections 3 and 4 of the RTE Act on Free & Compulsory Elementary Education and elimination of child labour in the area. He/she will liaise with the GP or urban ward Standing Committee on Education, Child Rights Task Forces and SDMCs in the area.

The following provisions on Attendance Authorities of the Karnataka Education Act can be adopted with some changes.

### 2.1 Attendance authorities and their powers and duties

- i. A local authority in the case specified under section .... and in other cases, the Director for Compulsory Primary Education may appoint as many persons as it or he thinks fit to be attendance authorities for the purpose of this Act, and may also appoint as many persons as are considered necessary, to assist the attendance authorities in the discharge of their duties.
- ii. It shall be the duty of the local authority and in any other case, the attendance authority, to cause to be prepared as early as possible, **before the begin of the academic year**, in such manner as may be prescribed list of children within the age group specified in the order under section .. in any specified area. Such lists shall also be prepared in every year in every specified area at such time and in such manner as may be prescribed.
- iii. The attendance authority or any person appointed to assist the attendance authority may put such question to any parent or require any person to furnish such information about his child, as it or he considers necessary, and every such parent shall be bound to answer such questions or to furnish such information, as the case may be, to the best of knowledge or belief.
- iv. It shall be the duty of the attendance authority to notify the parent of every child to whom the order under section .... applies, but against whom no attendance order has been passed under section .. , **one month before the begin of the academic year in writing**, that he is under an obligation to cause the child to attend a **specified** approved school with effect from the commencement of the specified academic year.

**2.2 Responsibility of parent to cause his child to attend school** - It shall be the duty of the parent of every child to cause the child to attend an approved school, unless there is a reasonable excuse for his non-attendance within the meaning of section ....

**2.3 Reasonable excuse for non attendance.-** For the purpose of these Rules, any of the following circumstances shall be deemed to be a reasonable excuse for the non-attendance of the child at an approved school, namely:-

- i. that the child is enrolled in a state-approved private or non-public elementary school
- ii. that the child is receiving instruction in some other manner which is declared to be satisfactory by the State Government or by an officer authorised by the State Government in this behalf;
- iii. that the child has already completed primary education up to the standard specified in the order under section ....
- iv. that the child has been granted temporary leave of absence not exceeding the prescribed period by the prescribed authority or by any other person authorised by the prescribed authority in this behalf;

### 2.4 Attendance orders

- i. Wherever the teacher/HM of a school find that the parent of a child has failed to cause the child to attend the approved school even three days after the beginning of the academic year and that there is no reasonable excuse for the non-attendance of the child within the meaning of section ....., they shall notify the name of the child to the Attendance Authority in writing within two days thereafter. Upon receipt of the name of the child, the Attendance Authority shall within next three days hold an inquiry.
- ii. If, as a result of the inquiry, the attendance authority is satisfied that the child is liable to attend an approved school under this Act, and that there is no reasonable excuse for the non-attendance of the child within the meaning of section ..., it shall pass an attendance order in the prescribed form, directing the person to cause the child to attend the approved school with effect from the date specified in the order.
- iii. An attendance order passed against a parent in respect of his child under this section shall, subject to the provisions of sub-section ....., remain in force for so long as this Act continues to apply to the child.
- iv. If any parent against whom an attendance order has been passed in respect of his child under sub-section (2), transfers the custody of the child to any other person during the period in which the attendance order is in force, such parent shall be bound immediately to inform the attendance authority in writing of such transfer.
- v. Where the attendance order has been passed against a parent in relation to his child under this section, such order shall have effect in relation to any other person to whom the custody of the child may be transferred during the period in which the attendance order is in force, as it has effect in relation to the person against whom it was originally passed.
- vi. A parent may, at any time, apply to the attendance authority for cancellation of the attendance order on the ground:
  - a) that he is no longer the guardian or the person in actual custody of the child; or
  - b) that circumstances have arisen which provide a reasonable excuse for non- attendance; and thereupon, the attendance authority may, after holding an enquiry in the prescribed manner cancel or modify the attendance order.
- vii If, even three days after receiving the attendance order, parents fail to send the child to the specified school, the Attendance Authority shall immediately declare **such a child to be a drop-out** and adopt following measures:
  - Attendance Authority, along with members of the SDMC, or the GP/urban ward level Child Rights Task Force\*, will counsel and apply social pressure on the family to accept the inadvisability of the child dropping out.

(\*GP/urban ward-level Child Rights Task forces – The GP/urban ward-level Child Rights Task Force shall be a Community Convergent Team to bring about convergence and coordination between various departments and community participation dealing with children’s rights. It shall consist of field-level officers of all the concerned departments, i.e., labour, education, W&CD, RD& PR, social welfare, etc., along with GP / ward elected representatives, NGOs, CBOs, and representatives of SDMCs of the area. The Attendance Authority shall be part of the Task Force.)

- If even seven days after issuing attendance order and counselling, parents fail to send the child to school, the Attendance Authority shall issue notice to the parents to appear on a specified date along with the child before the Child Welfare Committees (CWCs) set up under the JJ Act or any other quasi-judicial body (QJB) set up for the purpose.
- If necessary, the Attendance Authority shall take the help of the Special Juvenile Police under the JJ Act to bring the parents and child before the CWC / QJB.
- The CWC / QJB shall hear the parents and find out the reasons for the non-attendance of the child in the school.
- If the reasons given by the parents are economic, the CWC / QJB shall sanction the preferred form of economic assistance to the family on condition that the child attends school. The assistance shall be withdrawn if the child does not fulfil specified % of attendance (perhaps 85-90% attendance).
- The following shall be the ‘mitigating factors’ and the criteria under which the designated QJB /CWC may sanction specified forms of assistance (on condition that the child attends school) to the child and/or parents who are unable to fulfil the rights of their children due to their economic circumstances. Inability to fulfil the right to education will be checked through a means (income and assets) test and the following social vulnerabilities:
  - Family with income less than Rs. 1 lakh per year (Wadhwa committee report recommendation on defining BPL families)
  - Woman-headed household, deserted/widowed/ single woman
  - Family with a disabled/mentally challenged parent
  - Senior citizen-headed household without other means of support
  - Casual/informal worker–headed household, such as unskilled construction workers, domestic helpers, rag-pickers, etc.
  - Family living in slum, deprived of basic amenities such as water supply, child care services, etc.
- **For the purpose of sanctioning assistance to the family of the vulnerable child, the CWC / QJB shall, through the GP/urban ward-level Child Rights Task Forces (to be set up for the purpose), direct the concerned officials of the W&CD Dept., F&CS Dept., Social Welfare Dept., Labour Dept., SC/ST or BC/Minorities Development Corporations, local body, to render the assistance under their several welfare schemes to implement the decisions taken.**
- The assistance can be in the form of:
  - a scholarship of at least Rs. 100 per month to the child;
  - deposit of Rs. 10,000 in the name of the child (like in the Bhagyalakshmi scheme) which can amount to Rs. 1 lakh at the end of the period of compulsory schooling;
  - any other form of development assistance preferred by the parents (of a magnitude that is high enough to replace opportunity costs of sending children to school);
  - social security schemes such as Jeevanshree, Rashtriya Swasthya Bima Yojana and National Social Assistance Schemes for widow, old-age, disability and destitutes’ pensions, etc.;
  - issue of ration cards under BPL or Antyodaya scheme, etc., employment for 100 days under NREGA, loan for self-employment, etc.

**on condition, however, that the child is sent to school. OR**

- placement of the child in a free government residential school / hostel, ashrama school, etc. (Rules of the free government hostels need to be modified to make it mandatory for the hostel to receive such children); or
- placement of the child in an NGO-run residential school declared as fit institution under the JJ Act, etc.

- The CWC may also find sponsorship or foster parents for the needy child by keeping a ready roster of such donors. The CWC/QJB can seek greater involvement of corporates and civil society in sharing the burden of the government in assisting children from vulnerable families by providing foster care, supporting children through scholarships and incentives, organising sports and competitions, instituting awards, etc., to improving the quality of teaching and learning etc.
- Any parents getting / applying for benefits under any government scheme, for instance subsidised housing from slum board, should provide an affidavit that all their children go to school. No benefits should be provided to parents without conditionalities. Benefits should be withheld until parents send children to school. Before issuing ration card, insist on a certificate from the school that the applicant's children are going to school. Benefits should be cancelled if parents do not send children to school despite receiving them.
- The CWC may order community amenities (for the construction of anganwadis, toilets in schools, etc.) as laid down in the JJ Act, if sibling care or lack of toilets in school is preventing the child from coming to school - as provided under Section 30 of the Rules framed under JJ Act.
- The Attendance Authority and concerned department official to whom directive has been issued by the CWC / QJB shall ensure that the declared assistance is provided to the family within a time-frame of less than two weeks and that the child is attending school.
- Those parents who are **not** found eligible for assistance but who fail to send their children to school (for instance, those who keep girls at home for cultural reasons), or those who fail to send their children to school despite receiving assistance, shall be brought by the Attendance Authority before the CWC/QJB once again. The CWC/QJB shall declare such children as 'children in need of care and protection' under the relevant provisions of the JJ Act and subject them to procedures laid down for such neglected children under the JJ Act, i.e., placement in free government residential school/hostel, stay in temporary shelter homes and later in children's shelter homes, etc., as determined by the CWC/QJB.

**( These measures will ultimately give effect to the ruling of the Karnataka High Court that the 'state is the guardian of a minor when parents are unable to discharge their duties towards the child' (A. Sriram Babu vs State of Karnataka)**

### **3. Migrant children**

Children of parents who migrate for work for short durations of less than an academic year shall inform the school where the children are enrolled of the period of their migration. The Attendance Authority shall make arrangements for the stay of the children in free government residential schools, hostels, shelter or foster homes, or shelters-cum-schools run by NGOs for the period of their parents' migration so that their education is not disrupted during the course of an academic year.

Employers/contractors taking migrant labour for short durations of less than an academic year shall also make hostel arrangements for their compulsory school-age children before taking the parents to the place of migration.

If the parents are migrating with an employer / contractor for a period longer than an academic year, the onus to ensure the education of the children shall be on the employer /contractor providing work at the place of migration, in the language chosen by the migrants.

#### 4. Ban on employment of children

No person shall employ a child in a manner which shall prevent the child from attending an approved full-time school.

#### 5. Vocational education in secondary school

Vocational education shall be compulsory for those in the age group 15-16 who are found ineligible for academic education (aptitude for academic studies to be determined by a cut-off % marks to be obtained at the VIII Std. exam or through a Scholastic Aptitude Test).

#### 6. Penalties

- Failure to undertake above measures shall result in penalties of Rs. 1,000 on the attendance authority concerned for each child found out of school.
- The Attendance Authority may also be given an incentive of Rs. 1,000 for each child brought back to school.
- Any official of the other departments in the Child Rights Task Force, such as labour, W&CD, RD&PR, social welfare, etc., given any directions by the CWC / QJB, who fails to carry out the directive, shall be similarly penalised and those carrying out directive can be provided similar incentive.
- If any person fails to furnish any information as required by sub-section .... of section .... to the Attendance Authority he shall, on conviction, be punished with fine which may extend to Rs. ....
- A parent, failing to send a child to school even after receiving benefits or directions from the CWC/QJB, shall be required to provide free community service, as directed by the CWC/QJB, until he/she sends his/her child to school.
- Employers employing children so as to prevent them from attending full-time formal school shall pay Rs. 10,000 fine at the first instance and up to Rs. 20,000 and imprisonment up to three months at second instance.
- Employers/contractors employing short-term migrant labour for less than a year shall be penalised Rs..... for failing to arrange hostel facilities at the source of migration for compulsory school-age children of the migrant workers and for taking them along to the place of migration.
- Employers/contractors failing to arrange for the education, or provide education to compulsory school-age children of migrant workers in their employ for more than an academic year shall be penalised Rs. ....

#### 7. Bridging protocol: Rehabilitating existing OOSC and child labourers

While the above **preventive approach of not letting future cohorts drop out**, is entirely do-able, attempts focusing entirely on a curative approach of rehabilitating existing child labourers of all ages (6-16) can only reach limited numbers of children due to the large numbers of children involved (in lakhs) and the period of 3-18 months required to rehabilitate them. The problem will also become insurmountable if the preventive approach outlined above is also not in place, as fresh drop-outs will continue to appear even as older drop-outs are rehabilitated. **Hence the greater focus needs to be on preventing future drop-outs** and not just exclusively on rehabilitating existing child labourers.

##### 7.1 Rules to bring coherence between RTE Act and child labour laws

There is scant recognition of the fact that current laws do not cover 85% of child labourers engaged in agriculture, animal husbandry and the informal sector. Without bringing all sectors under a ban on child

labour it will not be possible to address child labour as children will simply drift from the banned sectors to those not banned. Depending only on persuasion through agricultural officers, etc. to tackle child labourers in agriculture is not going to work without the aid of law. Now that the latest budget has made education compulsory up to 10<sup>th</sup> Std., all child labour up to 16 years will also need to be banned in all sectors, as there needs to be congruence between the age at which compulsory education ends and the age at which employment begins.

**The following provisions on child labour and measures for dealing with it need to be made part of the Rules on RTE.**

- All kinds of wage and non-wage employment of children under 17 years (since compulsory education is to end at 16 years or SSLC) are herewith prohibited.
- This shall come into effect in the following phased manner (by raising the current permissible age for employment from 14 by one year each year till it reaches 17). The current distinction between hazardous and non-hazardous sectors is hereby removed for general employment.
- The minimum age for general employment in all sectors shall be 17, including agriculture, livestock, fisheries, forests, domestic service, informal sector work and work under the Contract Labour (R & A) Act, 1972, such as at construction sites, parking lots, canteens, etc, and under the Inter-State Migrant Workmen's Act.
- Light work of two hours per day (such as delivery of newspapers) may be allowed for children between 15-16 years of age, before or after formal school hours, in line with the Minimum Age Convention 138 of ILO.
- All pledging, trafficking, and bondage of children for labour against loans is herewith prohibited.
- All debts of parents incurred by pledging children for labour against loans are herewith extinguished and all such children shall be considered to have been released (This to be accompanied by public proclamation).
- The minimum age for work in sectors currently included under hazardous category of Child Labour (Prohibition & Regulation) Act shall be raised from 14 to 18 years with immediate effect in keeping with ILO Convention 182.
- Inspectors shall be appointed to check child bonded labour and other worst forms of child labour as given under ILO Convention 182.
- The punishments foreseen for these worst forms of child labour shall be at least Rs. 50,000 at the first instance and Rs. One lakh with minimum jail sentence of three months at the second instance. (Trafficking of children for child prostitution, drugs, sexual abuse, etc. as given in ILO Convention 182 on the same issue are criminal acts and shall be dealt with under IPC & CrPC)
- All entitlements, subsidies, tax allowances and other concessions currently extended to industries are herewith conditioned upon compliance with the new Rules on child labour and the Bonded Labour System (Abolition) Act and other relevant Acts.
- Use of child labour by any establishment in violation of these Rules shall lead to cancellation of licences, seizure of manufacturing equipment, cutting of electricity, etc.

- Hazardous work of children as family labour, such as beedi-rolling, is herewith prohibited. All family activity that is hazardous, such as beedi-rolling, shall be conducted in separate work-sheds built for the purpose (by the employer or contractor, where applicable) and shall not be performed inside a household.
- The number of hours of family labour that a child under 16 may perform during non-school hours is hereby restricted to two hours, keeping in view the child's right to adequate leisure, play and entertainment.
- All employment (from 17 years of age) is herewith made conditional upon employers producing certification by school authorities for the child having undergone ten years of compulsory schooling and for having completed 16 years of age.
- The employment and working conditions of young persons in the age-group 17-18 in non-hazardous activities shall be regulated in the following manner: Their work hours shall not be more than six hours. There shall be a compulsory break of ½ hour after three hours of work. They shall not be required to work between 6.00 PM and 6.00 AM. They shall have a rest day every week. Their wages shall not be less than the minimum wage fixed for adult workers. They shall not be required to work overtime.
- A three-month deadline from the date of coming into effect of these Rules is herewith provided to all employers to release the child labourers in their employment and to sign Memoranda of Understanding with the district authorities for their rehabilitation.
- The 'Bridging protocol' (**The circular of 5.06.10**) shall also lay down the manner in which the OOSC and child labourers shall be identified and rescued, how convergence between the various departments will be brought about to rescue them and assign them to bridge courses, the role of CWCs / QJBs, how the bridge courses will be run, the infrastructure, personnel, the curriculum, qualifications of teachers, duration of courses for various age-groups, services to be rendered to the child, assistance to parents, mechanism for monitoring the centres, manner of mainstreaming the children, etc. **Most of the procedures suggested for the vulnerable children under 'Preventive protocol' can apply equally to the OOSC and child labourers.**

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