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Section 12(1)(c) of the Right to Education Act:

Challenges in Implementation and the Way Forward

| Kartiki Parshuram Lokhande



Issue Brief

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ISSUE BRIEF

Section 12(1)(c) of the Right to Education Act: Challenges in Implementation and the Way Forward

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ABSTRACT

Section 12(1)(c) of the Right of Children to Free and Compulsory Education Act, 2009 mandates unaided¹ private schools to reserve 25% of their entry-level seats for the children belonging to the economically weaker section and disadvantaged groups. This provision focuses on inclusion of children from marginalise communities in private schools and providing educational opportunities to the less privileged. However, the limited success in its implementation has created a hindrance in achieving social justice goals.

This issue brief identifies the challenges that obstruct the successful implementation of the provision. The piece further discusses solutions to fill the provision's implementation gaps. This piece concludes by suggesting that successful implementation depends upon the joint efforts of the involved stakeholders.

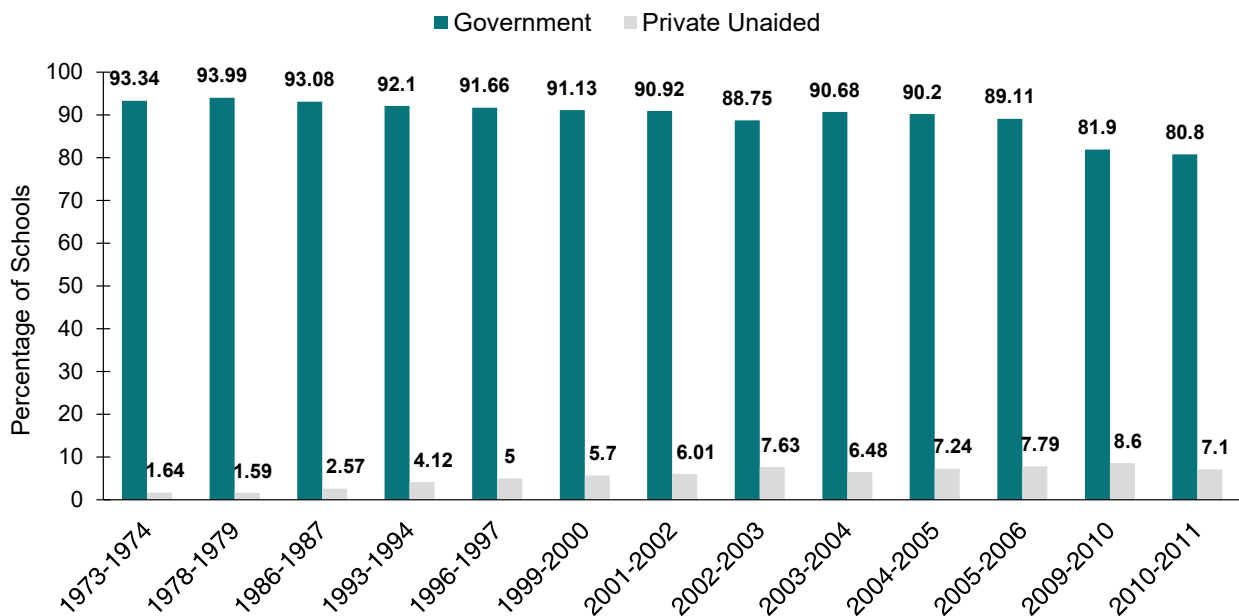
Keywords: Section 12(1)(c), Right to Education, 25% reservation, private unaided schools, Mumbai, governance

¹ An unaided school does not receive any kind of aid or grants to meet its expenses from the appropriate government or the local authority.

INTRODUCTION: RIGHT TO EDUCATION AND SECTION 12(1)(C)

Article 26 of the Universal Declaration of Human Rights, 1948 states that every individual has a right to education. According to the Declaration, education must be free of cost, at least at the elementary and the fundamental stages (United Nations, 2010). In India, Article 21A was added to the Constitution in 2002 after the 86th Amendment. It provides free and compulsory education as a fundamental right to all children between the ages of 6 and 14 years. The Right of Children to Free and Compulsory Education [RTE] Act, 2009, made education a legal right and the State liable for providing quality education to children. The RTE Act came into effect on 1 April 2010.

Figure 1: Comparison between Government and Private Unaided Schools



Source: Ministry of Human Resource Development (2014)

In 1986-87, private unaided schools accounted for 2.57% of the total schools in the country (Venkatanarayanan, 2015). In 2010-2011, the percentage of unaided private schools rose to 7% (ibid.). The increase of unaided private schools at the upper primary level was greater than at the primary level. In 1986-1987 there were 8.58% of upper primary unaided schools, while in 2011-2012, its number increased to 17% (ibid.). Taking this into consideration, Section 12(1)(c) of the RTE mandates non-minority unaided private schools to reserve 25% of their entry-level seats for the students from the economically weaker and disadvantaged sections of society.

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Section 12(1)(c) aims to create a common platform where children from different socio-economic backgrounds can share their interests and knowledge and bring about integrated learning. The provision was drafted to improve equity in education by enhancing educational opportunities and aims to improve social inclusion (Indus Action, 2018). Section 12(1)(c) is a progressive provision aimed at improving inclusion in private schools and providing opportunities to children from Economically Weaker Section [EWS] and marginalised communities. Nonetheless, a series of challenges still need to be addressed to achieve the intended goals of inclusivity and equal opportunities under the provision.

CHALLENGES IN IMPLEMENTATION OF SECTION 12(1)(C)

According to the 2021 report by the National Commission for Protection of Child Rights [NCPCR], the provision has only been implemented in 16 states and Union Territories [UTs] across the country to date (NCPCR, 2021). Assam, Bihar, Chandigarh, Chhattisgarh, Delhi, Gujarat, Himachal Pradesh, Jharkhand, Karnataka, Madhya Pradesh, Maharashtra, Odisha, Rajasthan, Tamil Nadu, Uttarakhand, and Uttar Pradesh are the only states and UTs that have implemented the section.

The RTE Act is implemented at the state level. Hence, the requirements for admission under Section 12(1)(c) differ from state to state. The definitions of categories of income limits, fees, and age limits are not clear or sufficient. For instance, the income limit set for the EWS category for Uttarakhand is Rs. 55,000 per year (Government of Uttarakhand, 2011). This figure falls below the minimum wage rate of Rs. 81,000 per year set by the State (Office of the Labour Commissioner, 2018), which can lead to the exclusion of many deserving children.

There is a lack of clarity regarding the term 'free education.' It is interpreted differently in different states. 'Free education' means that no child, other than a child who has been admitted by their parents to a school that the appropriate Government does not support, shall be liable to pay any kind of fee or charges or expenses that may prevent the child from pursuing and completing elementary education (Department of School Education and Literacy, 2021). Under the RTE Act, the schools must provide free entitlements such as books and uniforms. However, it has been observed that many schools did not provide books and uniforms to students admitted under the Act (Mufti, 2022).

There is also a lack of clarity concerning the age limit for admissions in entry-level classes. Delhi, Gujarat, Haryana, Rajasthan, Tripura, Uttarakhand, and West Bengal are the only states that have mentioned the entry-level age (Sarin, 2015). In Karnataka, over the 2017-18 and 2018-19 admissions period, the age limit criteria was changed four times. This ambiguity confused parents, leading to the exclusion of many children from the admission process (Indus Action, 2018).

The requirement of mandatory documents, including age proof, resident proof, and Aadhar card, also leads to the exclusion of children, without said documents, from the admission process. Additionally, the RTE Act applies only up to the age of 14. The provision is unclear regarding the further education of students admitted to private schools after 14 years of age.

There is also a huge barrier to information regarding the application process. Most parents are unaware of the dates of application submission, the documents required, and the lottery system for admission. Some states like Maharashtra and Karnataka have made the application process completely online (Sarin, 2015). In many cases, parents have to rely on cyber cafes to fill the school applications, given little to no access to the internet and existing barriers to digital literacy. The cyber

cafes charge exorbitant rates for filling the applications, making the process economically inaccessible. Additionally, the process excludes children who do not have parents or legal guardians.

The Centre reimburses private unaided schools for the admission of children under Section 12(1)(c). The approval and disbursement of reimbursement rates face a lot of challenges. The reimbursement² rate refers to the percentage of reimbursement the Central government approves out of the total reimbursement claims proposed by the State/UTs (Indus Action, 2018). The States do not disburse the amount received from the Centre to the private unaided schools on time, which harms the admission process (HT Correspondent, 2022).

In *Pramati Educational and Cultural Trust and Ors. v. Union of India and Ors.* (2014), the Supreme Court exempted the minority institutions from complying with the RTE Act, 2009 entirely. This judgement clarified that the Minority schools are mandated to neither reserve the 25% quota nor follow the RTE. This precedent has resulted in many private schools seeking minority status to avoid compliance with the RTE rules (First Post Editors, 2012).

CASE STUDY - MUMBAI

This study uses a mixed-method research design³ to examine the implementation of Section 12(1)(c) in Mumbai. The data collection was divided according to the following stakeholders:

- Unaided private schools of Mumbai;
- School management;
- Parents of the children admitted under the provision;
- Maharashtra State Commission for Protection of Child Rights [MSCPCR], which is the grievance redressal and monitoring body; and
- Anudanit Shiksha Bachao Samiti [ASBS], a Civil Society Organisation which helps in the implementation of Section 12(1)(c) in Mumbai.

The study analysed the data from the Maharashtra School Education and Sports Department and the Unified District Information System for Education [U-DISE] websites. Data for the academic year 2020-21 was collected from the Maharashtra government's Right To Education admission website. Three schools from each block were selected, totalling 57 schools.

A Right to Information [RTI] Application was filed by the author in January 2021 to get information about the number of complaints received and the complaints resolved for Section 12(1)(c), the number of students who have received free entitlements, and working of MSCPCR. However, the MSCPCR did not provide the required information. Therefore, a visit was conducted to the MSCPCR office in Mumbai and the annual reports from 2010 to 2017 were analysed.

Primary data was collected through telephonic interviews with parents of children admitted under the provision, the school principal of an unaided private school, and the head of ASBS. An interview with the former chairman of MSCPCR was also conducted through a video call.

² Private unaided schools receive reimbursement to the extent of per-child-expenditure incurred by the State or the actual amount charged from the child, whichever is less.

³ In mixed-method research, the researcher combines elements of qualitative and quantitative research approaches

KEY FINDINGS

1. Private unaided schools and the issue of implementation of Section 12(1)(c) in Mumbai.

Unaided private schools are the most important stakeholder. The schools have an important role to play in implementing the section. There is a reluctance from the unaided private schools to implement the provision. Moreover, ignorance from the government has led to non-compliance.

According to the 2011 RTE rules of Maharashtra, private unaided schools that provide admissions under Section 12(1)(c) are entitled to receive reimbursement (Government of Maharashtra, 2011). Under the Samagra Shiksha Abhiyan, the Centre and the State share the disbursement of the reimbursement fund in the ratio of 60:40. States must notify the per-child cost to receive their share from the centre.

Private unaided schools must open a separate bank account to receive the reimbursement. The reimbursement amount is equal to the actual expenditure per child by the school or the per-child cost notified by the State, whichever is less. The reimbursement process begins once the schools submit the reimbursement claims to the district officials. The district officials verify the claims against admissions and submit them to the State. The State then releases the reimbursement to the schools, and a claim is raised for the release of funds from the centre. The Central Project Approval Board releases the funds based on the actual expenditure. The Reimbursement amount for the academic year 2019-20 was Rs. 12,000 lakh for 1,80,978 children.

The monitoring process mentioned is unclear as various authorities are responsible for monitoring at different levels (Ministry of Human Resource Development, 2019). Such differences in per-child cost create confusion in calculations leading to obstacles in reimbursement. It also hinders transparency and implementation of the provision. Media reports have also highlighted the issues with reimbursement. In 2020, a school in Andheri refused to enrol nearly ten students (Gaikwad, 2020). According to the school management, they had not received the reimbursement of Rs. 96 lakh from the state government. The school blocked even the already enrolled students admitted under the provision from attending online classes.

Furthermore, the Maharashtra English Schools Trustees Association [MESTA] claimed that the dues under Section 12(1)(c) were pending since the academic year 2018-2019. According to MESTA, the government has to reimburse around Rs 700 crore to 8,000 schools in Maharashtra (Times News Network, 2020). The Uran Education Society, which runs private schools in Mumbai, filed a petition stating that the government has not paid the schools even after filling in the reimbursement claim forms. The school had admitted children eligible under Section 12(1)(c) in pre-primary. But reimbursement has not been made since 2013.

2. Experiences of Parents with Section 12(1)(c)

Parents face many difficulties while admitting their children to a school under Section 12(1)(c). Telephonic interviews were conducted with 8 parents to understand their problems during and after admissions. These parents had received the information about the provision from their neighbours or ASBS. Out of the eight parents, five were able to secure admission to the desired school for

their children under Section 12(1)(c). The rest could not get admission even after 3-4 years. These parents did not understand English, so it was difficult for them to understand the online procedure. They required ASBS' assistance filling out the form. After filling out the online form, they received a message about the school allotted to their child. Parents had to go to ASBS' office to print the form since the cost of doing so was high in cyber cafes. The required documents—a copy of the Income certificate, the Aadhar card of the parent and child, and the child's birth certificate—were then attached to the printed form and submitted to the school.

As mentioned, three parents could not secure admission under the provision. In the first case, the school cancelled the child's admission as the parent could not submit a copy of the stamp duty agreement of the house. In the second case, the child was selected through the online portal and the parents had submitted the necessary documents, but the school still denied admission. They have now filed litigation against the school. In the third case, the admission process was delayed considerably. The parents tried to get their child admitted under the provision for three years. In 2020, their child turned eight years old. Since the age limit at entry was till seven years, they could not secure admission.

All the parents interviewed stated that they lost their one-day wage collecting the required documents. They also mentioned that even after admitting children under the provision, the cost of education remained high. The parents said that the schools were not providing free books and uniforms. On top of this, some schools also demand activity and extracurricular fees. One of the parents interviewed had taken a loan of Rs 4,000 to buy books and uniforms. Another parent had requested second-hand books from a student but the teacher told them that it was compulsory to buy new books. All the parents believed that the BMC schools provided poor quality education. They preferred private schools as the medium of teaching was English.

3. Failure of the Regulator in implementing Section 12(1)(c) in Mumbai

The Maharashtra State Commission for Protection of Child Rights is a statutory body set up in 2007 under the Commission for Protection of Child Rights Act 2005 in Mumbai. MSCPCR has been monitoring the implementation of the RTE Act, 2009 since it came into force on 1 April 2010. An analysis of the annual reports of the MSCPCR from 2010 to 2017 and the interview with the former Chairman of MSCPCR shows the regulator's failure to monitor and implement the RTE and Section 12(1)(c).

The MSCPCR annual report of 2011-12 recommended the formation of an RTE cell. Yet, MSCPCR does not have a separate cell to handle complaints regarding RTE.

Table 1: Complaints mentioned in Annual Reports of MSCPCR

Year	Number of Complaints mentioned for Section 12(1)(c) in the annual reports of MSCPCR
2010-11	0 (0)
2011-12	0 (8)
2012-13	2 (12)
2013-14	0 (9)
2014-15	4 (32)
2015-16	2 (18)
2016-17	66 (66)

*Figures in brackets are the total number of complaints received by MSCPCR under RTE Act and the figures outside the bracket are the total number of complaints for Section 12(1)(c).

Source: MSCPCR (2011, 2013, 2014, 2017)

The non-binding nature of MSCPCR orders is the biggest hindrance to the effective enforcement of the provision and RTE Act. MSCPCR cannot take legal action against private schools directly. This stipulation delays the legal process against private unaided schools, and they are not held accountable for not providing admission under the provision.

MSCPCR does not separately maintain data on the number of complaints received, redressed, or pending under Section 12(1)(c). The annual reports available in the public domain have very little information. The cases are not maintained in a digital format. Hence, the author could only access these reports via an RTI application. During a visit to the MSCPCR office, an official said that the annual reports for 2017-18, 2018-19, and 2019-20 were not completed, and hence they have not been uploaded. The reports do not follow a standard format, and there are differences in the structure of all the reports, which shows that the working of MSCPCR is not transparent.

Media reports have also reported the ill-functioning of MSCPCR. The MSCPCR website has been inactive between March 2018 and February 2019 (Gaikwad, 2019). This has led to concerns about the working of the Commission and the government's apathy towards issues affecting the lives of the children. There have also been reports of a staff crunch in the Commission (ibid.). There are six members and a Chairman of the Committee. The tenure of the Committee ended in June 2020 (Bhatkhande, 2021). Till February 2021, the Maharashtra government had not appointed a new Commission. Six posts of the staff members are still vacant (MSCPCR, 2021).

The process of filing a complaint is long and hectic, therefore making the process inaccessible to many. The field visit and examination of MSCPCR reports reveal that MSCPCR lacks the capacity to deal with the various obligations and stakeholders under the RTE Act. The institutional design of MSCPCR also creates a lot of problems. The lack of clarity about where the complaint must be filed and whether the matter falls under the Education Department or not creates confusion. Consequently, the complainant ends up running from one office to another. MSCPCR is an appellate authority and lacks the legal power to take action against the defaulter. MSCPCR, hence, can be considered a toothless regulator with little to no power to punish and is the weakest link in grievance redressal.

WAY FORWARD

Government and private unaided school stakeholders face several challenges in implementing Section 12(1)(c). The provision's effective implementation requires sweeping changes.

Firstly, the government must share information about the rules and procedures without any ambiguities. There are many gaps in the per-child calculation procedure, reimbursement amount, the rule for reimbursement for pre-primary level, providing free entitlements, etc. The discrepancies in the U-DISE data and data on the Maharashtra Right to Education website are a barrier to the successful implementation of the provision. Ambiguities in rules and procedures also increase the chances of corruption and misuse.

The exemption of minority schools run by religious or linguistic minority groups from implementing the RTE Act also needs an urgent re-examination. The exemption of aided and unaided minority schools creates a loophole in implementing Section 12(1)(c) and creates a big obstacle to inclusive schooling.

Every academic year there is a difference in the number of schools registering on the RTE 25% website. All eligible schools must register themselves as the number of applicants for admission under Section 12(1)(c) is very high compared to available seats.

Schools are ultimately responsible for the implementation of the provision. There are many incidents where the school has rejected the application and demanded hefty fees or documents. The schools' reluctance to implement the provision has greatly affected the success of Section 12(1)(c).

Parents lack awareness regarding this provision and face many challenges in the admission process. There is a need for awareness campaigns in rural and slum areas that inform people about the application process and help them collect the required documents.

The current grievance redressal agency, MSCPCR, is inadequate and lacks legal powers. It only directs and recommends. There is no data available on the effectiveness of the recommendations and directives given by MSCPCR. For a strong grievance redressal mechanism, the Commission must have the ability to pass binding orders and the power to take action if the orders are not followed.

There is also a need for more participation of CSOs and NGOs in creating awareness and help in the implementation and monitoring of the provision.

CONCLUSION

The research aimed to understand the implementation of Section 12(1)(c) of the RTE Act 2009 in Mumbai. This provision challenges the inequalities in the education system. However, even after 10 years of its implementation, it still remains a work in progress. The implementation of the provision is unclear. There exists an inconsistency between the U-DISE data and the data of the schools available on the RTE 25 admission website of Maharashtra. There is ambiguity regarding the reimbursement for uniforms and books, which the schools are not providing. The online admission process is not understood by the parents. They do not have resources such as the internet, computer, and printer to complete the admission process. This affects the number of students getting admission under the provision. Moreover, the MSCPCR is not implementing Section 12(1)(c) in Mumbai successfully. This all reflects poor governance and unfulfillment of constitutional obligations. Further, the reach of non-governmental organisations and civil society organisations is limited due to the lack of awareness among people regarding the provision and its benefits. Therefore, the success of Section 12(1)(c) depends on the collaborative efforts of the stakeholders involved.

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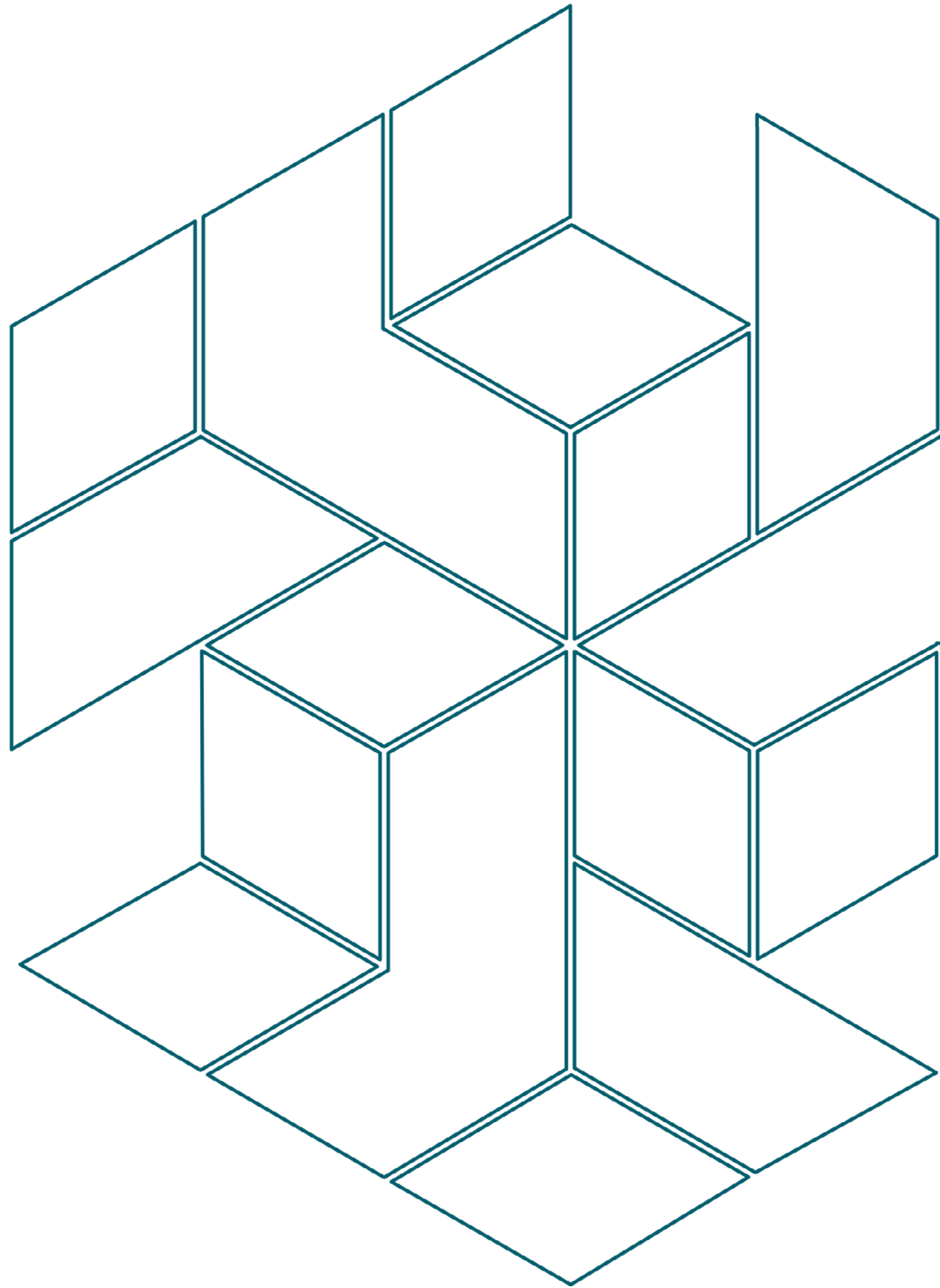
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