

REGULATION OF PRIVATE SCHOOLS IN INDIA

AN ANALYSIS OF THE
LEGAL FRAMEWORKS

Archana Mehendale



ऑक्सफैम इंडिया
OXFAM
India

A movement
to end
discrimination

ABOUT THE AUTHOR

Dr. Archana Mehendale has worked in the area of education law and policy, inclusive education and child rights for over twenty-five years. She was a member of the Committee constituted by the Central Advisory Board of Education that prepared the draft bill on right to free and compulsory education in 2005. She participated in one of the earliest studies conducted on implementation of Section 12(1)(c) of the Right of Children to Free and Compulsory Education Act, 2009 in Delhi and Bangalore, which was supported and published by Oxfam India in 2014. She works as an independent researcher and is also affiliated with the Centre for Education Innovation and Action Research at Tata Institute of Social Sciences, Mumbai.

CONTRIBUTORS

Anjela Taneja and Ankit Vyas (Oxfam India)

PEER REVIEWERS

Niranjan Aradhya (National Law School, Bangalore), Martin Haus (Education Policy Institute of Bihar), Binod Sinha (Oxfam India), Ranu Bhogal (Oxfam India) and Ambarish Rai (RTE Forum)

PREFACE

This exploratory work was undertaken as part of a commissioned study by Oxfam India. The purpose of this work was to examine the complex web of regulatory frameworks as they apply to private schools in India. The regulations covered in this document are those that were easily available through an online search. These regulations apply to private schools – while some of them apply to private schools alone, others apply to both public and private schools. This has been indicated in the document.

This work is accompanied by an [online accessible compilation](#) of legislation, rules and regulations on the subject. It can be used by practitioners, civil society organizations and researchers who have an interest in ensuring that the right to education of all children is protected and fulfilled.

Since this is a dynamic subject matter, with new directives getting added every day, it is important to see this as work-in-progress and an effort is made towards keeping this active and updated.

CONTENTS

INTRODUCTION	6
RATIONALE	7
METHODOLOGY	8
LEGAL JUSTIFICATION OF STATE ROLE IN REGULATION	10
NATURE OF REGULATORY PROCEDURES	13
MAPPING OF STAKEHOLDERS	14
SUMMARY OF THE LEGAL FRAMEWORKS	15
DIFFERENCES ACROSS THE LEVELS IN TERMS OF THE NORMS AND STANDARDS PRESCRIBED	16
International ~ National	17
National ~ State	21
Inter-State Differences	22
KEY REGULATIONS	23
RTE Rules	24
Norms For Establishment, Recognition And Affiliation	26
Monitoring And Inspection	34
School Closure, Withdrawal Of Affiliation And Penalties	36
Commercialization Of Education	40
Fee Regulation	46
Admission Process	57
Parent Participation	59
Teacher Qualifications And Salaries	60
Child Protection	65
Coaching Institutes	66

CONTENTS

UNDERLYING PRINCIPLES, ASSUMPTIONS OR EVIDENCE	70
Nature And Modality Of The Regulation Prescribed	72
Prospective Or Retrospective Application	72
Institutions	73
Processes	75
AREAS WHERE WORK NEEDS TO BE DONE	76
Public Interest	77
Input-Based Versus Outcome-Based Regulation	78
Market Regulation	79
Flexibility	79
WHAT NEEDS TO BE DONE	80
Issue-Based Advocacy	81
Action Research	81
Harmonizing Regulatory Frameworks With The Abidjan Principles	82
Changing Narratives	82
REFERENCES	83

INTRODUCTION

The past two decades have witnessed a growth in the number of private schools providing education in both rural and urban areas of India. Schools established and managed by agencies that do not belong to the government (either central, state or local bodies) can be termed as private. These schools may or may not receive funds or subsidies from the government.

ACCORDING TO UDISE DATA (2016-17), THERE WERE 69,898 AND 2,79,514 SCHOOLS BEING MANAGED BY PRIVATE AIDED AND PRIVATE UNAIDED MANagements RESPECTIVELY.

The total percentage of private schools in the country is 23.81%. There are inter-state differences with states such as Kerala and Delhi having more than 50% schools that are private and states like Bihar, Jharkhand and Tripura having less than 10% schools run by private management. While the DISE combines the private aided and private unaided schools when counting private schools, it also provides the numbers of recognized schools as well as recognized and unrecognized madrassas showing to some extent the diversity that is prevalent within the schools run by private agencies. Given this diversity of providers and the fact that education is a public good, state intervention is justified in order to regulate the size, quality and human resources of the private school sector. The proposed work aims to map these regulatory frameworks that govern private schools in India. It documents, analyzes and compares what exists and identifies specific areas for advocacy and action.

RATIONALE

In recent times, there has been a growing interest in the role of the state in regulating the private sector in education. At the international level, **THE ABIDJAN PRINCIPLES ON THE HUMAN RIGHTS OBLIGATIONS OF STATES TO PROVIDE PUBLIC EDUCATION AND TO REGULATE PRIVATE INVOLVEMENT IN EDUCATION** state that “States must take all effective measures, including particularly adoption and enforcement of effective regulatory measures, to ensure the realization of the right to education where private actors are involved in the provision of education” (Overarching Principle 4). At the national level, the Right of Children to Free and Compulsory Education Act, 2009 (RTE Act) provided a milestone by prescribing national level provisions that regulate the recognition of private schools. In addition, the state level frameworks that existed before the RTE Act and specific norms that came after the RTE Act by way of state rules or government resolutions added another layer to the regulatory frameworks applicable to the private schools. This has resulted in a scenario where there is a lack of comprehensive understanding of the prevailing regulatory frameworks as they apply at the state level, how they align with the national and international levels and how they compare with other states. Furthermore, ambiguities and inconsistencies within what is available in the public domain, makes it difficult to engage with the regulatory frameworks. This report is a result of an exploratory study done with the purpose of addressing this gap.

IT PROVIDES A MAPPING OF THE EXISTING REGULATORY FRAMEWORKS RELATED TO PRIVATE SCHOOLS AND OFFERS AN ANALYTICAL COMMENTARY ABOUT THE AREAS REGULATED, NORMS PRESCRIBED, AND PROCEDURES ADOPTED.

This report can be useful to those who are interested in improving social accountability of the private sector in education provision.

METHODOLOGY

THIS REPORT WAS GUIDED BY THE FOLLOWING BROAD OBJECTIVES:

1. Gather, classify, and collate regulatory frameworks applicable to private schools in India.
2. Analyze the regulations by examining the extent to which they align with the national and international standards, comparing inter-state differences and discussing the modalities adopted.
3. Identify issues, gaps, challenges and opportunities for engaging with the regulatory frameworks at different levels.

THE SPECIFIC QUESTIONS THAT THIS REPORT ADDRESSES ARE:

1. What are the existing regulatory provisions, norms and standards laid down by the state and central governments with regard to private schools?
2. What are the areas that are regulated and what is the nature and modalities of the regulation?
3. What are the norms and standards prescribed, in what way do they align with the human rights frameworks?
4. At what stage are these regulatory frameworks in terms of their development and to what extent do they indicate continuation or discontinuation of earlier regulatory norms?
5. What are the institutional mechanisms, procedures and processes prescribed and is there any evidence of clarity, accessibility and transparency of these?
6. Are there any areas that have been deregulated?
7. Are there any areas where regulation has been restructured?
8. What benchmarks, principles and evidence are applied in the regulatory prescriptions?
9. How do the regulatory provisions apply to different stakeholders?
10. What are the issues, gaps and potential challenges in the regulatory frameworks?
11. What are the areas where work needs to be done at the state and the central levels?

THIS WORK FOCUSED ON MAINLY COLLATING, MAPPING AND ANALYZING THE INFORMATION GATHERED ABOUT THE REGULATORY FRAMEWORKS. HERE ARE THE STEPS THAT WERE TAKEN TOWARDS PREPARING THE REPORT.

1. Various kinds of government documents describing regulatory frameworks were gathered by visiting official websites of the central and state governments. Materials such as legislation, rules, orders, notifications and guidelines were collated and then organized according to each state.
2. Secondary material and available documentation on the subject were also collected and reviewed.
3. A questionnaire was prepared and used to collect additional information from the state governments with the help of Oxfam India partners/field teams.
4. An attempt has been made to cover all the states where material is available and particular attention has been paid to Oxfam India's focus states.
5. All the material downloaded, scanned and shared was tagged so as to clearly identify the state and the regulatory area/theme.
6. A draft Working Paper was initially shared with stakeholders for feedback before the finalization of this report.

The report is organized as follows. The first part describes the legal justification of state role in regulation by borrowing from international and national frameworks and maps the main stakeholders relevant in the Indian context. Then a summary of areas regulated is presented in the form of a chart which gives a snapshot of what is available across different states. All efforts have been made to prepare the chart based on most up-to-date information available online. However, non-reference to a particular state should not be seen as if the provision is not applicable to that state, because it could mean that information about that provision in the state was not easily available to this researcher. The difference across the various levels i.e. international and national, national and state and across states is then discussed. This is followed by a discussion on key issues wherein select regulatory areas are described in greater detail. The last section discusses the underlying principles and assumptions, the areas where work needs to be done and suggests how that work could be explored further.

LEGAL JUSTIFICATION OF STATE ROLE IN REGULATION

The starting point for any discussion on regulation is the role of the state and the bases for justifying the role of the state in regulating the education sector in India. It is pertinent to address this question at the outset because there is a move towards reviewing and

revamping the regulation and governance of education systems.¹ There is also a growing body of literature pointing towards the deregulation of the education sector² which is found to create an efficiency-versus-equality trade-off in national education systems.³

INTERNATIONAL FRAMEWORKS

The regulatory role of the state is justified in the legal and normative frameworks and regulation is clearly seen to fall within the scope of its obligation to protect the right to education. Private schools can be regulated and monitored by the state to fulfil its commitment towards the essential features of the right to education – the 4 A's, namely availability, accessibility, acceptability and adaptability. Specifically, **the state has an obligation to ensure compliance with minimum standards of education, and guard against disparities in educational opportunity.**⁴

THE UNESCO CONVENTION AGAINST DISCRIMINATION IN EDUCATION (1960) provides that the objective of the establishment or maintenance of private educational institutions should not be to secure the exclusion of any group, but “to provide educational facilities in addition to those provided by the public authorities” and that “the education provided conforms with such standards as may be laid down or approved by the competent authorities, in particular for education of the same level.”

THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS (ICESCR) (1966) recognizes the right of parents to send their children to schools, other than those run by the state. Further, it affirms the liberty of individuals and bodies of individuals to run their own educational institutions. However, this **liberty is subject to the principles set out in the state's obligation to realise the right to education, and it is required that the education in these institutions must conform to the minimum standards laid down by the state.** Article 13 (3) states: The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions. Article 13 (4) states: No part of this article shall be construed so as to interfere with

1 Ministry of Human Resource Development (2020). National Education Policy 2020. Government of India.

2 Dana N. Thompson Dorsey & Jonathan A. Plucker. (2016). Deregulation and the American Education Marketplace, *Peabody Journal of Education*, 91:4, 424-440, DOI: 10.1080/0161956X.2016.1207431; Ramamurthy, S., & Pandiyan, K. (2017). National policy on education 2016: A comparative critique with NPE 1986. *Economic and Political Weekly*, 52(16), 46-53; Patrinos, H. A., & Sosale, S. (Eds.). (2007). *Mobilizing the private sector for public education: A view from the trenches*. The World Bank.

3 Schlicht-Schmälzle, Raphaela & Teltemann, Janna & Windzio, Michael. (2011). “Deregulation of education: What does it mean for efficiency and equality?,” *TranState Working Papers 157*, University of Bremen, Collaborative Research Center 597: Transformations of the State.

4 Human Rights Council (2015). Report of the Special Rapporteur on the right to education, Kishore Singh on Protecting the right to education against commercialization. A/HRC/29/30.

the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

GENERAL COMMENT 13 ON RIGHT TO EDUCATION (ARTICLE 13) ISSUED BY THE COMMITTEE ON ICESCR reiterates the liberty of individuals and bodies to run their own schools, it also states that the state has an obligation to ensure that this liberty ‘does not lead to extreme disparities of educational opportunity for some groups in society’ (Para 30). Given the principles of non-discrimination, equal opportunity and effective participation in society for all, the State has an obligation to ensure that the liberty set out in article 13 (4) **does not lead to extreme disparities of educational opportunity** for some groups in society (para 30). It states that the minimum standards may relate to issues such as admission, curricula and the recognition of certificates. In their turn, these standards must be consistent with the educational objectives set out in article 13 (1) (para 29). States parties are required to ensure that curricula, for all levels of the educational system, are directed to the objectives identified in article 13 (1). They are also obliged to establish and maintain a **transparent and effective system which monitors whether or not education is, in fact, directed to the educational objectives** set out in article 13 (1) (para 49).

THE UNITED NATIONS CONVENTION ON RIGHTS OF THE CHILD (UNCRC) (1989) in its Article 29(2) reiterated that no part of the present article or article 28 (which referred to right to education) shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that **the education given in such institutions shall conform to such minimum standards as may be laid down by the State.**

THE GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS (2011) affirm that the state must enact legislation and regulations delineating the rights and duties and **establishing grievance redress mechanisms**, the private sector must ensure that it **does not negatively affect the enjoyment of human rights, and**

provide credible policies and processes that enforce human rights commitments.

THE UNITED NATIONS TRANSFORMING OUR WORLD: THE 2030 AGENDA FOR SUSTAINABLE DEVELOPMENT commits to providing inclusive and equitable quality education at all levels—early childhood, primary, secondary, tertiary, technical and vocational training (para 25). Goal 4 refers to ensuring inclusive and equitable quality education and promoting lifelong learning opportunities for all. **Education 2030 Framework for Action**— Principles informing the Framework indicate that education is a shared societal endeavour, which implies an inclusive process of public policy formulation and implementation. Civil society, teachers and educators, the private sector, communities, families, youth and children all have important roles in realizing the right to quality education. **The role of the state is essential in setting and regulating standards and norms.**

THE ABIDJAN PRINCIPLES - Guiding Principles on the human rights obligations of States to provide public education and to regulate private involvement in education (2019) refer to two overarching principles that underline the role of the state in regulating education. Overarching Principle 4 says: States must take all effective measures, including particularly the adoption and enforcement of effective regulatory measures, to ensure the realisation of the right to education where private actors are involved in the provision of education. Overarching Principle 8 says:

STATES MUST REGULARLY MONITOR COMPLIANCE OF PUBLIC AND PRIVATE INSTITUTIONS WITH THE RIGHT TO EDUCATION AND ENSURE ALL PUBLIC POLICIES AND PRACTICES RELATED TO THIS RIGHT COMPLY WITH HUMAN RIGHTS PRINCIPLES.

DOMESTIC FRAMEWORK

THE CONSTITUTION OF INDIA, ARTICLE 21A empowers Parliament to enact legislation for guaranteeing free and compulsory elementary education to all children between the ages of 6-14 years. Under **Article 19(1)(g)**, private persons are entitled to establish and maintain schools. **Article 19(6)** states that: Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, **reasonable restrictions on the exercise of the right** conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,— (i) the **professional or technical qualifications**

necessary for practising any profession or carrying on any occupation, trade or business, or (ii) the **carrying on** by the State, or by a corporation owned or controlled by the State, of **any trade, business, industry or service**, whether to the exclusion, complete or partial, of citizens or otherwise. The right of private educational institutions has come before the Courts several times. The Supreme Court has held that the **right to establish an educational institution can be regulated** and that such regulatory measures must be in general to ensure proper academic standards, atmosphere and infrastructure and prevention of maladministration.⁵ Thus, position of law as interpreted by the Supreme Court is that the **right to administer does not include the right to maladminister.**

THE SUPREME COURT HAS CAST A NEGATIVE OBLIGATION ON THE PRIVATE EDUCATIONAL INSTITUTIONS IN THE SENSE THAT THERE SHALL BE NO PROFITEERING, NO DEMAND OF EXCESSIVE FEE, NO CAPITATION FEE, NO MALADMINISTRATION, NO CROSS SUBSIDY.⁶

Further, **Article 19 (g) must be balanced with the contents of Article 21A.** Article 21A which recognizes a fundamental right to education lies primarily against the state but given that education is provided by private entities the Court has adopted the 'horizontal' application of rights alongside the traditional state-citizen based 'vertical' application.⁷ The imposition of regulations to promote the constitutional objectives and to promote educational excellence operate as desirable regulations.⁸

The National Education Policy [2020] framework also recognises the regulatory role of the state. It stipulates the aims of the regulatory system. It says: the school education regulatory system must focus

on developing and improving parameters which lead to better educational outcomes; it must not overly restrict schools, prevent innovation, or demoralize teachers, principals, and students. All in all, regulation must aim to empower schools and teachers with trust in order to aim for excellence, enabling them to perform at their very best, while ensuring the integrity of the system through the enforcement of complete transparency and full public disclosure of all finances, procedures, and educational outcomes (Para 8.1).

In sum, the role of state in regulating private school providers is well-established in international and national legal and normative frameworks.

5 T.M.A. Pai Foundation and others v. State of Karnataka and others. [(2002) 8 SCC 481]

6 T.M.A. Pai Foundation and others v. State of Karnataka and others. [(2002) 8 SCC 481] and P.A. Inamdar v. State of Maharashtra [(2005) 6 SCC 537] as cited in Society for Unaided Private Schools of Rajasthan v. Union of India and Ors. [2012] 6 SCC, Writ Petition (C) No. 95 of 2010.

7 Sudhir Krishnaswami, Horizontal application of fundamental rights and State Action in India in Raj Kumar, C., and K. Chockalingam. Human rights, justice and constitutional empowerment. Oxford University Press, New York, 2011.

8 The Proprietary High School vs State of Gujarat And Anr. on 23 July, 1984 AIR 1985 Guj 146, [1985] 1 GLR 216.

NATURE OF REGULATORY PROCEDURES

THE SPECIAL RAPPORTEUR ON RIGHT TO EDUCATION⁹ KISHORE SINGH in his statement on the commercialization of right to education emphasized the need for States to create a comprehensive regulatory framework to control private providers in education and uproot commercialization in education. He proposed that such a framework can be developed by having **regulations that are prescriptive, prohibitory and punitive** (para 97).

PRESCRIPTIVE REGULATIONS relate to the establishment and operation of private schools, setting minimum standards, including conditions for their recognition and operations, curriculum requirements, minimum qualifications for teachers, infrastructure standards and quality measures, and recognition of degrees or diplomas issued. These are basic requirements for any institution. Such regulations describe **reporting obligations**, including performance measures and financial reporting, and require **compliance with monitoring and oversight agencies**. (para 98).

PROHIBITORY REGULATIONS are those which ban specific activities such as **for-profit education and prohibition of fee-based discrimination** because it creates and entrenches social and economic inequalities. Prohibitive regulations can ban the registration of private schools as companies, the recruitment of unqualified teachers or those employed in public schools, the closure of schools during an academic year, **indulgence in false commercial propaganda** to lure insufficiently informed students and parents, the charging of capitation fees and the extraction from students or parents of any undeclared financial contribution over and above the approved fee. Regulations must prohibit **school selection** on the basis of ability, social or ethnic origin, or any form of psychometric tests (para 99).

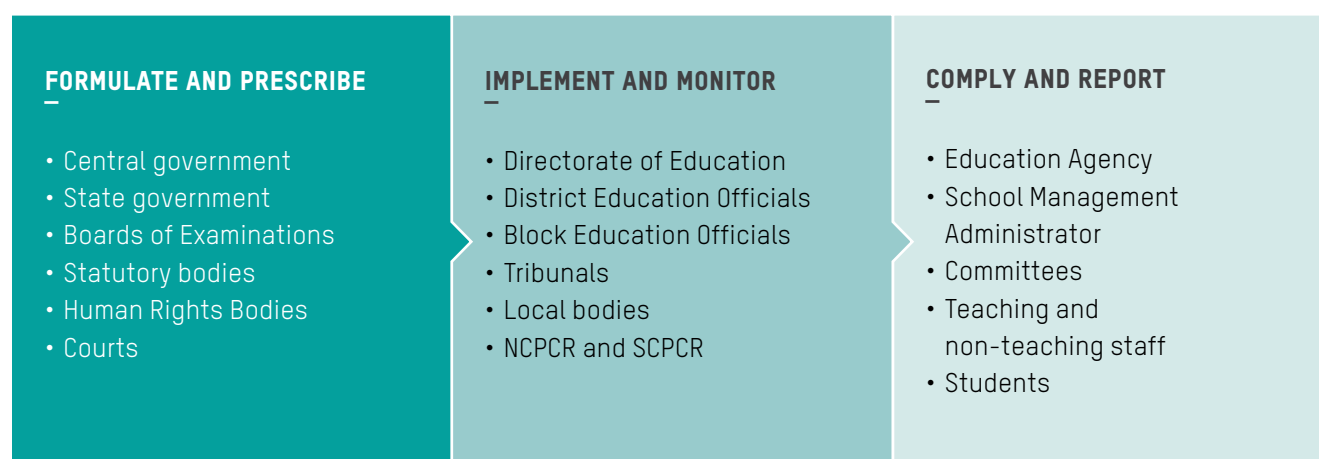
In addition to being prescriptive and prohibitive, the **REGULATORY FRAMEWORK SHOULD ALSO BE PUNITIVE**, including **withdrawal of operating licences** for lack of compliance with regulations. This is necessary to control non-compliance with regulations as well as to take action against private providers who indulge in fraudulent and corrupt practices, such as false declarations of profits or of salaries paid to teachers and tax evasion. It is important that corrupt and fraudulent practices are investigated, and operators and owners of schools who act illegally or abscond with student fees are prosecuted in the criminal system (para 100). In the Indian context, we see regulatory frameworks that are prescriptive, prohibitory and punitive, as we shall see in the following sections.

9 Human Rights Council (2015). Report of the Special Rapporteur on the right to education, Kishore Singh on Protecting the right to education against commercialization. A /HRC/29/30

MAPPING OF STAKEHOLDERS

Regulatory norms are applicable to various stakeholders who are part of the private school ecosystem. The stakeholders can be mapped in three levels: one, stakeholders who prescribe the regulations; second, stakeholders through whom regulations are implemented and monitored and third, stakeholders to whom the regulations apply. Figure 1 presents these three levels of stakeholders.

FIGURE 1. MAPPING THE STAKEHOLDERS



At the top level, the stakeholders who identify the problems to be addressed, respond to the need to regulate and perform their role to protect the right to education are the various bodies of the state namely the central and state ministries that are responsible for education, the boards of examinations that are constituted at the national and state level, statutory bodies constituted specifically for regulating standards like the National Council for Teacher Education, human rights bodies and the courts. They formulate regulations as solutions to prevailing education problems and control or address the problems by prescribing norms and standards. These come in the form of statutes, rules, government orders, regulations, guidelines, orders, bye-laws, and judgments which interpret what is prescribed and give directions.

The regulations are implemented and monitored by the administration responsible for education at the state level. This is often the Directorate of Education or the Commissioner for Public Instruction, and the subordinate levels such as the District and Block level Education Officers, Tribunals constituted to adjudicate issues of private school employees, and various committees that may be constituted to regulate and monitor the education sector.

The stakeholders that are required to comply and report on the prescribed regulations are the education agency which owns and runs the private school, the Administrator or the School Manager who is administratively responsible for the proper functioning of the school according to the norms prescribed by various authorities, the various Committees formed at the school level as prescribed. These could be Managing Committees, Parent Teacher Associations, Executive Committees etc.; the teaching and the non-teaching staff employed by the school on full-time or part-time basis and the student body.

SUMMARY OF THE LEGAL FRAMEWORKS

Education is listed as a subject in the Concurrent List of the Constitution of India, meaning that schools, including private schools, are governed by both Central and State laws. However, **some aspects of private school administration continue to be governed almost exclusively by State laws, such as fee fixation and inspection of schools.** Others are now governed by a combination of the RTE Act and State laws, such as recognition, hiring of staff and curriculum. In this section, we will summarize the legal frameworks related to school education starting from pre-school to higher secondary school level.

There are several matters related to education that are regulated by the central and state law. The areas listed in tables in the upcoming sections provide a cross section of provisions that apply to private schools. It must be noted that the tables are based on information that was easily accessible online and has not been validated through right to information queries with the state governments.¹⁰ Hence the table is likely to have gaps, which are presented as blanks, indicating 'do not know'. Since the focus is on private unaided schools, **the tables does not list the provisions that apply to religious and linguistic minorities and those that apply to aided schools,** given that these schools enjoy a peculiar status and require a separate inquiry.

As the tables show, regulatory framework is not uniform across the states. **Some regulatory provisions are available in several states while others are available in only a few. For example, the norms and conditions for registering playschools/preschool are available only in Andhra Pradesh, Jammu and Kashmir, Jharkhand and Tamil Nadu, but is not indicated in other states.** Accessibility of school building to all castes and communities appears to be provided for only in Andhra Pradesh. Such a consideration when establishing new schools can be considered by other states in view of realizing inclusive education. With regards to the school buildings and premises to be used only for education and skill development, only Jammu and Kashmir and Madhya Pradesh do not have these explicitly mentioned while all the other states have replicated that provision in the state RTE rules based on the model RTE Rules suggested by the MHRD. In the case of Telangana, it is not clear based on available material if the RTE rules made by the undivided Andhra Pradesh are being implemented or new rules are being drafted. Provisions related to protection of child rights are few and seen primarily in Andhra Pradesh and Karnataka. The tables also show states that have more regulatory provisions on education and states where there is not much available. For example, on norms about school infrastructure requirements for getting recognition or affiliation, no provisions were available for states of Chhattisgarh, Jharkhand, Madhya Pradesh, Uttarakhand, Tripura although provisions in other areas are available for these states.

¹⁰ This researcher would like to acknowledge that there is a possibility of human error in processing the secondary material and lack of time in undertaking a detailed qualitative content analysis and validation for the purpose of this report.



DIFFERENCES ACROSS THE LEVELS IN TERMS OF THE NORMS AND STANDARDS PRESCRIBED

INTERNATIONAL ~ NATIONAL

NATIONAL ~ STATE

INTER-STATE DIFFERENCES

This section reviews the differences and gaps across the various levels of norms and standards prescribed. This is done at three levels, the difference between international and national levels, national and state levels and lastly the difference between states is noted.

INTERNATIONAL ~ NATIONAL

Certain norms that have been prescribed at the international level do not find corresponding provision at the state level. Table 1 shows how the national provisions compare with the Abidjan Principles.

THE ABIDJAN PRINCIPLES - Guiding Principles on the human rights obligations of States to provide public education and to **regulate private involvement in education** provides that: "Private actors have a responsibility to respect the right to education and other human rights in education, including by: a. **avoiding causing or contributing to adverse impacts on the right to education through their own activities, and addressing and providing reparation when such impacts occur;** b. seeking to prevent or mitigate adverse impacts on the right to education that are directly linked to their operations, products, or services, even if they have not directly contributed to those impacts" (para 49). This is a responsibility imposed on the private actors and the existing regulatory framework at the national and state level in India neither holds the private school providers responsible for contributing to adverse impacts on equitable right to education nor does it require them to repair the adverse impacts.

Para 52 says: "States should impose public service obligations on private actors involved in education to ensure that such private actors contribute to the realisation of the right to education in such a way that: a. at the level of the institution, **education delivered** in all private instructional educational institutions is **consistent with applicable human rights law and standards** relating to the right to education; and b. at the systemic level, there are **no adverse effects of private educational institutions on the enjoyment of the right to education**. This is an obligation imposed on the state to ensure certain conditions for the operation of private schools. In the Indian context, although the curricular principles (Article 29 of the RTE Act and the National Curricular Framework 2005) require respect and adherence to human rights law and standards, **the government is not required to address this at the systemic level and prevent any adverse impact of excessive privatization**.

Para 53 of the Abidjan Principles also recognizes the responsibility of the State to **establish effective regulation of private educational institutions** which must be in line with applicable human rights law and standards so that no private educational institution or organised group of private educational institutions is in a position to unduly influence the education system, including where necessary capping the number of private instructional educational institutions or the share of private provision, in so far as it is compatible with the liberty to choose and establish private instructional educational institutions; b. that there are **no conflicts of interest for any public official** who is in a position to influence private actors involved in education; and c. that marketing, advertising, or other practices by private educational institutions are not misleading. In the Indian context, **the regulatory norms do not include anything that will prevent any group of private institutions from unduly influencing the education system. There is also no cap on the number of private schools that can be set up at the district or neighbourhood or a ward/village level**, although the setting up of a private school is based on the specific need which is demonstrated. The wrong or misleading advertising is covered under the consumer protection legislation.

The Abidjan Principles also require the states to define and enforce minimum standards applicable to private instructional educational institutions. These **standards should be designed and adopted through a participatory process involving all stakeholders**, including children and other learners, parents or legal guardians, communities, teaching and non-teaching staff, education unions, other civil society organisations, and the private instructional educational institutions (para 54). While the RTE Act and the state legislation provide for minimum standards, these have not been developed through a participatory process in consultation with wider groups of stakeholders such as parents/children, schools, or civil society organizations.

TABLE 1. MINIMUM STANDARDS OF THE ABIDJAN PRINCIPLES AND IMPLEMENTATION IN INDIA (PARA 55)

STANDARD	STATUS IN INDIA
 <p>Governance of the private instructional educational institution</p>	State legislation contain provisions on the roles of education agency, committees, manager, finance, appointments
 <p>Process for registration and licensing, and the conditions for their withdrawal</p>	Provided under RTE Act and central RTE Rules and state RTE Rules, in addition to state legislation provisions governing establishment of school
 <p>Reporting requirements to the State, such as financial and operational or quality information.</p>	Provided under state legislation plus affiliation bye-laws. Includes administrative and financial reporting.
 <p>Full and effective participation of children and other learners, parents or legal guardians, communities, teaching and non-teaching staff, education unions, and other civil society organisations</p>	The RTE does not provide for full and effective participation as stated in the Abidjan Principles. Only some states provide for PTAs. ¹¹ However, participation of other stakeholders is missing in existing regulatory framework in India
 <p>Management of education resources</p>	Provided for in state legislation, how funds should be held and utilized only for expansion or development of schools
 <p>Where necessary, the level of fees and other direct and indirect charges, paying particular attention to the risk of over-indebtedness and the State's obligation to ensure that education is accessible;</p>	Some states ¹² have fee regulation legislation, it is not a national law and hence some states do not have these provisions.
 <p>Transparency of and access to information about the private instructional educational institutions, including their domestic and, where applicable, international administrative and financial structure; all potential fees and other charges for the learners; the use of education resources; the curriculum and pedagogical methodologies and practices; the conditions of enrolment; the institution's legal status and origin; and other policies of the institutions;</p>	This is proposed in the National Education Policy 2020. It proposes transparent public self-disclosure of all the basic regulatory information. Currently, all schools, including private schools, are required to share information with the government for the Unified District Information System of Education (U-DISE). In most states, private schools are also required to submit audited reports to the state government ¹³ .

11 Andhra Pradesh, Jammu and Kashmir, Rajasthan, Sikkim and Uttar Pradesh

12 Maharashtra, Tamil Nadu, Punjab, Rajasthan, Gujarat, Madhya Pradesh, Bihar, and Uttar Pradesh. Karnataka has amended Rules.




13 Except Chhattisgarh, Haryana, Jharkhand, Odisha, Sikkim, Telangana, Tripura, and West Bengal

 <p>Conditions and transparency of learners' certification.</p>	<p>This is provided for under Affiliation Bye-laws and state examination board legislation.</p>
 <p>Respect for academic and pedagogical freedoms</p>	<p>This is not included in the existing laws. On the contrary, teachers' code of conduct in states like Delhi and Kerala restrict the freedoms of the teachers¹⁴</p>
 <p>Protection for the rights of learners to freedom of association and speech</p>	<p>There is no specific legislation in this regard only for learners' right. This is included in the fundamental rights under the Constitution of India.</p>
 <p>Protection for learners against all forms of discrimination in the enjoyment of the right to education, to guarantee equality and inclusive education for all learners, including by ensuring that the conditions of enrolment, admission, and learning are not directly or indirectly discriminatory; and paying particular attention to their impacts on the rights to equality and non-discrimination of vulnerable, marginalised, or disadvantaged groups. Such protection must guarantee the existence of and re-entry into inclusive education for pregnant girls, young mothers, and married girls under 18 years of age, by enabling them to remain in or return to school without delay;</p>	<p>Non-discriminatory clauses are present in the RTE Act and state rules under RTE.</p>
 <p>Minimum professional qualifications of staff; training; labour rights including working conditions, terms and conditions of employment and salary, and freedom of association and collective bargaining; and the status of instructional educational institution leaders, teachers and other staff, which must conform at least to applicable human rights law and standards; the curriculum, and pedagogical methodologies and practices, with due regard for applicable human rights law and standards, particularly the right to freedom of thought, conscience, and religion, the rights of minorities and indigenous peoples, cultural rights, and academic and pedagogical freedom.</p>	<p>Minimum qualifications are provided for under RTE Act. There is a state variation with regards to terms of employment of teachers and staff working in private schools across states.</p>
 <p>Strict limitations to the suspension and expulsion of learners, ensuring due process and that any such suspension or expulsion be reasonable and proportionate</p>	<p>Some state legislation allows suspension and expulsion of learners, this is being called into question as it is against the RTE Act.</p>

¹⁴ These codes of conduct for teachers prohibit teachers from a number of activities, including running any business or trade, publish or manage political magazine, enter into second marriage (Kerala), publish books, accept gifts (Delhi)

 <p>Discipline and the prohibition of corporal punishment</p>	This is provided for in the RTE Act.
 <p>The protection of learners' rights in the context of failure or delay in the payment of fees;</p>	This is not provided for.
 <p>Standards for secure and safe learning environments, and infrastructure that is adapted for all learners, including girls, women, and learners with disabilities, taking into account such factors as learning space sizes and maintenance, sanitary and kitchen facilities, furniture, equipment, and disaster risk management, as well as learning materials such as textbooks and teaching or learning aids</p>	This is provided for in the RTE Act and state legislation as well as affiliation bye-laws.
 <p>Minimum requirements regarding accessibility, including access for persons with disabilities in line with the obligation to guarantee reasonable accommodation, and ensuring that institutions do not directly or indirectly charge additional fees to any learner;</p>	This is provided for under RTE Act and the Rights of Persons with Disabilities Act 2016
 <p>The physical and mental health, safety and welfare of learners, including by providing for standards regarding psychosocial support; health and hygiene; and the protection of learners from violence, abuse, and sexual harassment;</p>	This is provided for under RTE Act, National Curricular Framework 2005 and the Protection of Children from Sexual Offences Act 2012.
 <p>Protection from threatening, shaming, and bullying for learners or their families, in particular to protect those that may not meet the academic standards expected by the institution and those who may raise concerns about the institution;</p>	There is provided for under the RTE Act Section 17 (1) prohibiting mental harassment and anti-ragging legislation in some states. ¹⁵
 <p>Protection of the learners, in particular children, against excessive marketing or advertising by the institution at which they are enrolled;</p>	This is not provided for although false publicity is covered under The Consumer Protection Act, 2019.

15 Example, Andhra Pradesh, Maharashtra, Tripura

 <p>Privacy and data protection, ensuring in particular respect for the rule of law and ethical practices with regards to personal data. States must also ensure that no personal, including biometric data, be collected or retained without consent, or be shared with third-parties without express consent and for purposes other than education, including for commercial, immigration, or security purposes;</p>	<p>The consent is currently not provided for. Most of the data related to a child is required for linking scholarships and incentives with the student's Aadhar number.</p>
 <p>The maximum acceptable teacher/learner ratio in terms of ensuring quality education</p>	<p>This is provided for under the RTE Act</p>
 <p>States should ban commercial advertising and marketing in public and private instructional educational institutions, and ensure that curricula and pedagogical methodologies and practices are not influenced by commercial interests.</p>	<p>This is provided for as no commercial activity is allowed on school premises under affiliation bye-laws and state rules under RTE in most states.¹⁶</p>

NATIONAL ~ STATE

Since education is a concurrent subject, Central legislation applies to the states, and state legislation largely adheres to the national legislation. Two **inconsistencies** that stand out are:

1. The RTE Rules in Gujarat allow for exemptions from the scheduled norms and standards prescribed under the RTE Act if specific learning outcomes are achieved by the school seeking exemptions from the norms and standards. This state rule is inconsistent with the national statutory requirement.
2. The Uttar Pradesh Self-financed Independent Schools (Fee Regulation) Act 2018 states that the income from commercial activity in the premise of the school, if any, shall be considered income and shall be deposited to the account of the school. This stands in contradiction with the norm that there should be no commercial activity in the school premise.

Although not an inconsistency, but an example of a gap is the recommendation of the Committee of the Central Advisory Board of Education (2005) on Regulatory Mechanisms for Textbooks And Parallel Textbooks Taught In Schools Outside The Government System which observed that there is **hardly any regulation or regulatory mechanism for the textbooks and textual materials used in schools outside the government system** and recommended to central government to issue a set of national guidelines to ensure that curricular materials adhere to constitutional values and the aims of national policy. It also suggested that State governments should be responsible for ensuring that private bodies do not flout these. It is proposed that there be instituted a **National Textbook Council to monitor textbooks**. However, these recommendations have not been implemented either at the national level or at the state level and hence remains a gap in regulation.

¹⁶ Except states of Jammu and Kashmir, Jharkhand, Madhya Pradesh

INTER-STATE DIFFERENCES

While there are several similarities in the norms and standards prescribed across the states, there are also considerable differences across states when it comes to certain norms and standards. This is not a problem as such, given that education is a concurrent subject and state governments have the authority to determine how education in the state should be shaped.

One of the similarities is with regards to the manner in which **regulations related to the establishment and recognition of schools** is organized. All states have step-by-step process which starts with seeking permission to start a school, then getting recognition from the state government and lastly getting affiliated to a board of examinations. All states for which information is available specify norms for each of these three steps- **permission, recognition and affiliation**. States may also use different terms to denote the steps and prescribe different norms and procedures. For example, there are differences with regards to physical infrastructure norms that are a precondition for granting school recognition. The RTE Act provides minimum norms and standards, however the standards laid down by the state governments and the affiliation boards, that are additionally applicable, are very different. The prime example of this is area of the classroom, space to be provided per student, size of the playground and such facilities. For example, space per elementary grade student is six square feet in Karnataka¹⁷ and eight square feet in Gujarat¹⁸. These are discussed more elaborately in the next section.

One area which is particularly prominent in the context of Bihar and Delhi is that of **School Autonomy**, which is a gap in other states. In Bihar,¹⁹ a school may be granted autonomy: 1. i) to design its own curriculum ii) to plan

its own examinations or iii) both 2. The design of the curriculum and evaluation by the school shall be subject to the following conditions i) The curriculum or syllabi of subjects should, by and large be within the Board's Scheme of Studies especially in the matter of number of subjects to be taught, as for example, there will be no deviation from the three language formula. ii) The curriculum shall be in consonance with the general National Policy as adopted by the Board from time to time. iii) The school shall promote the spirit of secularism and National Integration. iv) Wherever National Policy requires amendment in the curriculum it will be done by the school. v) The standard of curriculum shall, in no way, be less than obtaining in the Board's syllabi. vi) The school will have the freedom to experiment with new subjects which may be taken as additional subjects. vii) The Board shall issue the certificate on the basis of school assessment duly monitored by the Board. The purpose of granting School Autonomy is "to allow the schools to do better and achieve greater heights, to allow a greater scope for experimentation in school education, to cater to the diversity of local/social needs in a vast country like India; and to provide for decentralization of educational planning and administration."²⁰ The Delhi Education Code also provides that the Director may grant recognition to a school following its own scheme of instruction and curricula if he/she is satisfied with the standard of education. These provisions allow for innovation at the school level without having to be bound by the regulatory norms related to designing curriculum and teaching-learning.

In the next section, we will explore the inter-state differences further by focusing on key issues related to regulation.

17 Karnataka Educational Institutions (Classification, Regulation and Prescription of Curricula etc.) Rules, 1995.

18 The Gujarat Right of Children to Free and Compulsory Education Rules, 2012

19 Bihar School Examination Board Affiliation (High Secondary) (Amendment) Regulation, 2013

20 Appendix III, point 3, Bihar School Examination Board (Senior Secondary) Affiliation Bye-laws, 2011.



KEY REGULATIONS

RTE RULES

NORMS FOR ESTABLISHMENT, RECOGNITION AND AFFILIATION

MONITORING AND INSPECTION

SCHOOL CLOSURE, WITHDRAWAL OF AFFILIATION AND PENALTIES

COMMERCIALIZATION OF EDUCATION

FEE REGULATION

ADMISSION PROCESS

PARENT PARTICIPATION

TEACHER QUALIFICATIONS AND SALARIES

CHILD PROTECTION

COACHING INSTITUTES

This section outlines key regulations across different areas and their differences across states.

RTE RULES

Most of the states have adopted the model RTE rules prescribed by the Ministry of Human Resources Development with regards to operationalization of Section 18 and 19 of the RTE Act. Some of the common provisions are that (a) the applicant school shall be run either by a society registered under the Societies Registration Act, 1860, or by a public trust constituted under any law for the time being in force. In some states, schools can be run by a company within the meaning of the Companies Act, 1956 whose Memorandum and Articles of Association do not allow it to make profit; (b) that the applicant school is not run for profit to any individual, group of individuals or any other persons; (c) that the applicant school conforms to, seeks to and has a curriculum to implement the values enshrined in the Constitution of India (d) that the applicant school buildings or other structures or the grounds are used only for the purposes of education and skill development; (e) that the premises of the applicant school is open to inspection by any officer authorized by the State Government or local authority; that the applicant school shall furnish such reports and information as may be required by the Board or by any other authority under the State Government from time to time as and when required and shall comply with such instructions of the State Government or the local authority as may be issued to secure the continued fulfilment of the conditions of recognition of the school or for the removal of deficiencies. However, some states have additional provisions that stand out.

THE GUJARAT RTE RULES prescribe a minimum carpet area of 8 sqft per child plus 60 sqft for teaching. They also require schools to maintain a website. However, **it is the only state which provides relaxation to schools that achieve a certain level of learning outcomes** with weightage given to different requirements of school

in terms of learning outcomes at absolute levels, and in comparison, to the past performance, inputs and non-academic outcomes. This is to be independently assessed by third-parties every 4 years. Additional stipulations are that no unrecognized classes can run within the premises or outside in the same name of the school, and that if norms not met, schools may be taken over or handed over to another management. The duties of schools include use of information technology and 14 registers to be maintained.²¹

THE KERALA RTE RULES include additional requirements for getting school recognition. Malayalam needs to be taught as a compulsory language, barrier free access needs to be provided along with adapted toilets for children with disabilities, biometric identification details along with the Unique ID number of each child is to be maintained in the school. Like Gujarat, it stipulates that the school does not run any unrecognized classes within the premises of the school or outside in the same name as the school.²²

THE MADHYA PRADESH RTE RULES additionally **require schools** seeking recognition under Section 18 of RTE Act to also to **set up fire extinguisher or other fire security arrangements** as per National Building Code-Part 4 and notify fee to be charged in a manner directed by Commissioner.²³

THE MAHARASHTRA RTE RULES additionally prescribe that the schools shall be recognised or granted permission if they conform to the required norms standards only in those places where it is found to be an actual need on the basis of school mapping.²⁴

IN TAMIL NADU RTE RULES, schools are also **required to comply with the norms and standards notified by**

21 The Gujarat Right of Children to Free and Compulsory Education Rules 2012

22 The Kerala Right of Children to Free and Compulsory Education Rules 2011

23 The Madhya Pradesh Right of Children to Free and Compulsory Education Rules 2011

24 The Maharashtra Right of Children to Free and Compulsory Education Rules 2011

the State Government under any other law regarding infrastructure facilities including land and buildings. In addition, schools are also required to adhere to norms related to number of teachers to be employed in the school, nature of building and the facilities to be provided in the building, teaching learning equipment,

library, play material, games and sports equipment that should be made available in the school. Every school is also required to supply protected drinking water and also ensure that lavatory and urinal facilities are provided in the schools as per the criteria to be specified by the competent authority.²⁵

THE UTTARAKHAND RTE RULES PROVIDE FOR A FOUR-MEMBER COMMITTEE CONSISTING OF THE DISTRICT EDUCATION OFFICER, ADDITIONAL DISTRICT EDUCATION OFFICER (BASIC), MEMBER NOMINATED BY DISTRICT-MAGISTRATE AND THE BLOCK EDUCATION OFFICER, TO BE FORMED AT EVERY DISTRICT FOR RECOGNITION OF SCHOOLS. THE SCHOOLS ARE ALSO REQUIRED TO SUBMIT DISE FORMAT EVERY YEAR.²⁶

THE WEST BENGAL RTE RULES are however **most detailed** in terms of laying down the detailed **recognition norms**, including provisions with regards to fees. Every school seeking recognition under the section 18, in addition to the requirements of the Board to which it is to be recognised or seeks to be affiliated to, is required to abide by the following conditions — school promotes respect for the National Anthem, National Flag and National Emblem and National Integration; the applicant school is located in a relatively noise-free and pollution-free area, having adequate supply of drinking water and electricity; has a building usable in all weathers and the plan of the building sanctioned by the Gram Pradhan of the Gram Panchayat, in case of rural area and by the Chairman of the Municipality or Mayor of the Municipal Corporation, in case of urban area; has a playground for the students. It should also have a barrier-free access; class rooms of an area minimum 400 sq. ft. (25 ft. X16 ft.) each which is comfortable and suitable for imparting lesson and of not less than the number of class units; good quality of separate lavatory for students and

teachers and good quality of separate lavatory for girls students, if it is a co-education school; a girls' common room, if it is a girls or co-education school; a teachers' room; adequate furniture so that students do not have seat more than three in bench; a library with sufficient number of books (not less than 500) on literature and other subjects but excluding text books or notes. The school is required to have a students' admission procedure and fees structure duly published by the School Management Committee; arrangements for periodical medical checkup of students; comply with the rules and regulations, and satisfy the minimum qualification norms set by the National Commission for Teacher Education to the teachers' recruitment for the satisfaction of the recognizing authority; have recruited teachers as per the staff pattern and qualifications specified by the State Government or the Board with which it is affiliated, whichever is higher; have a duly published service rules and leave rules for the teaching and non-teaching staff; have a determined the pay structure of its teaching and non- teaching

25 The Tamil Nadu Right of Children to Free and Compulsory Education Rules, 2011

26 The Uttarakhand Right of Children to Free and Compulsory Education Rules 2011

staff in such manner as may be directed by the State Government; have provisions for contributory provident fund and gratuity to the teaching and nonteaching staff; have a fees structure for the students which cannot be enhanced without the prior permission of the State Government; have a building with separate staircase for entrance and emergency exit; have sufficient fire safety equipment and have trained person among the staff for using fire safety equipment; and pay respect to Indian Constitution and observe the National Anthem, National Flag and National Emblem and National Integration.²⁷

Although most of the norms may be covered under legislation related to recognition and affiliation in other states, the provision in the Gujarat rules related to replacing outcome-based criteria for relaxing the input-based norms and the Kerala provision related to biometric identification of children are unique.

NORMS FOR ESTABLISHMENT, RECOGNITION AND AFFILIATION

WHAT SOME STATES REGULATE

Establishment of schools, their recognition and requirements for affiliation by different boards

Additionally, provisions in various states pertain to the following:

- Ensure school serves a public function
- It has the basic infrastructure and with safe, sanitary and healthy facilities
- Owns its land or has long term lease for the same
- Ensure that it is financially viable and has adequate funds to start schools
- School's performance in board exams to remain adequate to retain Board affiliation
- Qualifications of teachers and principal
- Requirements adhering to government provisions pertaining to curriculum, textbooks and medium of instruction
- Mapping potential catchment areas of private schools, either separately or as part of urban planning
- Criteria for withdrawing recognition- not fulfilling conditions of recognition, denying admission on discriminatory grounds, propaganda that insults religious beliefs, employing unqualified teachers
- Non-usage of school premises for commercial, political, non-educational purposes
- Submission of annual reports to the government
- Provision for closure and taking over of school and handing over of property to government in instances of closure

²⁷ The West Bengal Right of Children to Free and Compulsory Education Rules 2012

The norms for **establishment of schools, their recognition and requirements for affiliation by different boards constitutes the bulk of regulatory provisions.** Broadly, the process starts with a society or a trust or a nonprofit company applying for a permission to establish a school. There are a set of criteria that need to be fulfilled at that stage including eligibility of individuals/groups of individuals to establish schools, financial viability, ownership of land, minimum area of land required for setting up a school, and no-objection certification regarding land use, supplemented by appropriate documents furnishing evidence of ownership/lease. At this stage, the need for establishing the school may also have to be demonstrated. Further, a commitment that the standards for construction of the school building, safety measures for children, and provisions for hygiene and sanitation, hiring of qualified teachers will be complied with is also required. Permissions are required to open higher classes, to upgrade any institution into a high school or open new courses. Once the permission is given, the education agency is required to start the school within a prescribed time and apply for recognition. The recognition can be first given temporarily and then permanently and the norms vary across states. The school can apply for affiliation or for a recognition by an affiliating body only after it has first been recognised by the state government. In the case of schools seeking affiliation from central boards of examination, a “no-objection certificate” from the state government is a requirement. There are a set of norms and standards that schools need to comply with for all the three stages of establishment, recognition and affiliation and there are grounds laid down why these can be rejected or withdrawn. There are considerable differences across states about the norms prescribed, but the broad process and structure remains similar. While **norms for affiliation are more elaborate, those for establishment are relatively few.** In this section, these norms are discussed in more detail as they apply to different states.

IN ANDHRA PRADESH, an education agency has to satisfy that there is a **need for providing education facilities,** that there is **adequate financial provision** and the **school is located in sanitary and healthy surroundings.** The title deeds to the site for building, playground, plans approved by local authority, evidence of available finances have to be submitted. The endowment to be maintained is a deposit by way of national saving certificate or Kisan Vikas Patra. Teaching and non-teaching staff are entitled to salaries and allowances as prescribed. The school should follow same syllabi, textbooks and handbooks as recognised schools.²⁸ Starting new school or upgrading an existing school or opening higher classes or additional sections can happen only if there is a need. The application form requires information on the number of children in the locality, how many schools, their student strength, distance from locality. At high school level, the school is also required to indicate if there is any natural barrier between proposed school and existing schools.²⁹

The **school infrastructure** required includes all-weather building, furniture, syllabi, textbooks, library, lab equipment, sanitation. Room size is prescribed and so are the requirements of table and chair for teacher, long bench with 5-6 students, 50 cents of play area, 20 cents garden, one urinal and one latrine for every 100 students. Exemption for playground, and garden is allowed if other alternative arrangements for indoor games are available. Satisfactory sanitary certificate should be given by the Municipal Health officer or Doctor of a Primary Health Centre. Permanent recognition is granted if the school has a pucca building, completed 10 years of existence after receiving temporary recognition, management has implemented all instructions issue, performance of the school in 7th and 10th during the last ten years is satisfactory, admission has not been denied on religion, caste, race, language, it has not encouraged any propaganda or practice that will insult religion, not refused to being an exam centre for board exams.³⁰

28 Andhra Pradesh Education Act, 1982 with amendments in 1987

29 Andhra Pradesh Education Department Rules 1986

30 Andhra Pradesh Education Department Rules 1986

The **safety standards** that schools have to follow are as per the guidelines laid down by the **National Building Code and includes grills in high rise school buildings, fire extinguishers, first aid, maintenance of vehicles** and obtaining fitness of the school vehicles from the Transport Authorities as prescribed by the Government from time to time. The cost of providing zebra crossings at the roads crossing near the schools, which are located in Municipal Corporation/Towns are to be met by the School Management, adequate personnel have to be provided to guide the movement of the children to ensure road safety and transportation. In addition, structural soundness certificate of the school building/premises and produce occupancy certificate from the authorities concerned, No Objection Certificate from the Police Department (traffic) and as well as concerned local authority confirming that the standards of National Building Code for Educational Institutions, and Indian Standards Code IS:8827.1978 are complied with in respect of the following items: (i) Corridors; (ii) Staircases, their width and rise, and their number per given area of floor space; (iii) Parapets; (iv) Exits, their number and specifications; (v) Ramps; (vi) Circulation Areas; (vii) Fire Protection norms is also required.

Schools are required to provide for teaching of Telugu as first/second **language**. Girls' institutions are not allowed to be converted into a coeducational or boys' institutions and shifting of the institutions from one locality requires permission.³¹

ARUNACHAL PRADESH also has similar provisions with regards to **establishing the need for providing educational facilities** to the people in the locality or for the type of education intended to be provided by the institution. Similar provisions with regards to **adequate financial provision, location** in sanitary and **healthy surroundings**; security deposit and assurance of adequate funds to run the institution on a stable footing is required. Schools also have to comply with

the prescriptions with regards to accommodation, appointment of teaching and other staff, the code of conduct, furniture and equipment, syllabi, and text-books. **Arunachal Pradesh** provides for an Expert Body to make recommendations to the state government on norms and standards on regulating schools.³² It also affirms the school safety standards and explicitly provides that no plastic roof for private school and hostel is allowed. All buildings must have CGI sheet roof in absence of RCC/SPT building. It also requires schools to provide teaching of language in accordance with the three-language formula adopted by the State Government.³³

IN ASSAM, permission can be granted only to institutions that have 2 bigha land in rural and 1 bigha land in urban areas for primary and middle school; It provides for adequate classrooms, schools to follow approved courses, **not be run for profit**, and open to all without discrimination, and that **structures not be used for commercial** or residential or political, communal or non-educational activity. It also states that the schools should not have a thoroughfare, and any business portion of the property is separated. Schools are also required to promote regional languages and cultural heritage and have a managing committee.³⁴

BIHAR stipulates norms on size of the land, and if rented, the lease should be at least for 30 years. The physical infrastructure norms are similar to other states and lay down specific floor areas of classrooms, HM room, staff room, lab, computer room, math room, library, multipurpose room, games room, store room, medical room, admin room, veranda. Additionally, it requires provision of staff quarters for guard, 25 computers with internet connectivity, ramps, tubewells, sewerage and sanitation, electrification, fire safety, drinking water prescribed by municipal authorities, adequate facilities for providing recreation activities and physical education as well as social, cultural and moral development of

31 Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration and Control of Schools) Rules 1994

32 Arunachal Pradesh Education Act 2010

33 Arunachal Pradesh Education Rules 2010

34 Assam Non-government Educational Institutions (Regulation and Management) Act 2006

the students and for safeguarding their health. The specifications for library are also laid out very clearly and include having at least five books (other than textbooks) per student in its stock subject to a minimum of 1500 at the beginning. In the selection of books, newspaper and magazines norms of guidelines provided by the Board should be followed and purchases should be made in consultation with the subject teachers. The library is required to not contain any book or literature that espouses or propagates communal disharmony or casteism or discrimination based on religion, regions or language etc. The school should not stock in the library any book disapproved by the Government/ Board.³⁵

DELHI lays down elaborate provisions for recognition of school which is similar to the provisions discussed earlier for other states. The school has to **demonstrate** that it meets a **real need** of the locality and is not likely to adversely affect the enrolment in the already recognised neighbouring school. The School is required to have a Reserve Fund and be **financially viable**. **The qualifications of Principal and teaching staff** and their numbers are not lower than those prescribed in government and aided schools. Teachers are paid salaries regularly; teachers are full time employees and are not engaged in any business. The school buildings and premises are not used day or night for commercial or residential purposes or for communal, political or non-educational activity. Some conditions can be exempted if the Director is satisfied that the requirements will be met in near future³⁶ The Administrator has the authority and discretion to decide on matters related to opening of new schools in specific zones. If it is against the public interest to open a school in a specific zone, an alternative zone can be proposed for establishing the school. The appropriate authority also has the power to exempt provisionally any private school meeting requirements if it satisfied that the school will be in a

position to fulfill in the near future, the requirements from which it is provisionally exempted.³⁷

Although the RTE does not specify land norms, the Delhi Master Plan 2021 gives 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. The **Shailaja Chandra Committee** had observed that 16% unrecognised schools would qualify for recognition after 2007 but 61% would qualify if the old norms were to be applied. Given the contradiction between the land norms of Master Plan 2021 and the room requirements specified under RTE, the committee had recommended that the Master Plan 2021 was applied only to new schools but that the existing primary schools to be assessed according to the space requirements of RTE. It had also recommended that demonstration of essentiality and public need may be deleted and it should be left open to the market to decide the requirement of schools in a particular area.³⁸

IN GOA, new schools are permitted to be established in any part of the State, if, (a) in the case of a primary school, no school is functioning within a radius of 1 km. from the proposed school; (b) in the case of High School, no school of that category is functioning within a radius of 3 kms. from the proposed school; (c) in the case of Higher Secondary school, no school of that category is functioning within a radius of 8 kms. from the proposed school. However, the distance restrictions do not apply if the schools are to remain unaided and if they fulfill the infrastructural requirements.³⁹ The rooms in which classes are held should provide required accommodation for all the pupils actually admitted in each class at the rate of not less than 0.74 sq. m. per pupil on the roll. Every Secondary and Higher Secondary School should as far as practicable provide a playground

35 Bihar School Examination Board Affiliation Bye-laws 2011

36 Delhi Education Code

37 The Delhi School Education Rules, 1973

38 Cited in The Report of the Review Committee on the Delhi School Education Act and Rules 1973 (Shailaja Chandra Report).

39 The Goa, Daman and Diu School Education Act, 1984

within a reasonable distance from the school at the rate of about 0.4 hectare of land for every 250 pupils.⁴⁰

As mentioned earlier, the **GUJARAT** schools are required to provide requisite accommodation for all the students actually admitted in each class, at the rate of not less than 8 sq. ft. per student exclusive of the space required for a table and a chair for a teacher, a teaching platform, blackboard and any other equipment required for teaching. Every registered school shall, as far as practicable, provide a playground within a reasonable distance from the school at the rate of one acre of land for every 250 students. Admissions to divisions of a standard should be limited to the number of students for which there is accommodation in the class room, subject to a maximum of 45. Since this is higher than the PTR norms of RTE, it is unclear if a classroom with 45 children would be assigned two teachers at the primary and upper primary levels. In the case of standard X, not more than 10 students who rejoin the registered school after failure at a final examination held by the Board, may be admitted with the permission from the Officer.

NO NEW SCHOOL WILL ORDINARILY BE ALLOWED TO BE OPENED IN A LOCALITY IF THE BOARD IS CONVINCED THAT IT IS LIKELY TO RESULT IN UNHEALTHY AND/OR UNFAIR COMPETITION WITH AN EXISTING INSTITUTION WITHIN A REASONABLE DISTANCE.

In rural areas, this may be taken as 5 km. If, as a consequence of starting of a new school, any school already in existence in the same locality suffers a loss of more than 20 per cent in its enrolment, this would be considered as a positive proof of unhealthy competition

having occurred, and the Board may on this basis alone, recommend that no grant should be paid to such a newly opened school. (17) As far as possible, the starting of new schools will be related to the population of the area, and a working basis may be taken as one secondary school for every 3,000 population. The Educational Survey is also to be kept in mind while deciding new applications. Areas which are already saturated with secondary schools will have to produce very strong reasons for starting another school. This provision may, however, be relaxed in the case of remote and cut off areas, where the population is mostly of adivasis or backward classes.⁴¹

HARYANA has very specific and elaborate infrastructure norms for schools. A private school can be run in a rented building on lease hold basis with minimum of twenty years irrevocable lease deed provided such building fulfills the norms of land and building. Apart from the building norms on classroom: Minimum size - 24' x 18', there is a requirement of verandah of 10' width. The height of classroom should be at least 10'. The number of classrooms will be equal to the number of sections in the school. Like Gujarat, the maximum number of students is 50 in a section which is higher than what can be supported by a single teacher as per the RTE norms. All the other infrastructural requirements related are similar to those seen in other states. The school building having more than one storey is required to provide one ramp and one staircase of at least 6' width. The rules specify that the school shall not be in operation from residential buildings or building not ear-marked for school in the State of Haryana. The schools shall provide or make arrangement for adequate playground within the radius of 500 meter according to the number of students. The covered area and open area shall be in the ratio of 35/65%. The classroom shall have two doors, requisite number of windows and proper ventilation. The number of students in the classroom shall not be more than the students calculated on the basis of 10 square feet per student for secondary and senior secondary schools and 9 square feet per student

40 Goa, Daman and Diu Secondary and Higher Secondary Education Rules, 1975

41 Gujarat Secondary Education Regulations 1974

for elementary stage/nursery stage; The veranda with every class room should be 8 feet in width for single loaded; 10 feet in width for double loaded; Additional toilets are to be added for every 200 students. There are specific standards for stairs and ramps with 4.6 feet in width for stairs and 6 feet in width of ramp. If the school do not provide ramp than they shall arrange the classes of handicapped students at the ground floor.⁴²

IN HIMACHAL PRADESH, the board may affiliate schools that provide the following essential documents the Societies registration certificate & a copy of bye laws, a NOC from the state government, latest certificates on Fire Safety, Building Safety, building map/plans for school, the rent agreement of school building and playground, proof of teachers appointed as prescribed, a 'no Grant in aid' affidavit, a non-encroachment certificate of Govt. land, certificates for library, laboratory, drinking water, furniture, lavatory & electricity facility, staff salary affidavit showing the salary of the staff given/paid as per the labour notifications on minimum wages. For permanent affiliations, institutions should have got affiliation renewed unconditionally for the last five years, land on which building & playground of the institution exist must have been registered in the name of society or on lease basis for not less than 30 years. The Institution should also follow the curricula, detailed syllabi and textbooks approved by the Board from time to time, no private institution shall open its branches after obtaining affiliation for one institution. The time and vacation schedule shall be the same as would be prevalent in the Government running schools in Himachal Pradesh. Only half an hour deviation in school timings can be granted on the written request by the competent authority. **In every district, one Recognition Committee headed by a retired judge shall be constituted.** Officials from Revenue Department, Public Works Department, Fire Service, Electricity Board, Health and Education

Department, a reputed NGO shall be members. **They shall visit the schools periodically or at least the erring institutions as listed by the Chief Education Officer.**⁴³

THE KARNATAKA regulations are similar to provisions mentioned earlier for other states. **The granting of recognition is subject to provision of a security deposit and assurance of adequate funds to run the institution on a stable footing.** It also has a provision of constituting an Expert Body, similar to **Andhra Pradesh**.⁴⁴ General regulations relating to buildings of educational institutions are similar to other states in terms of location in healthy and sanitary surroundings, adherence to structural and fire safety standards. Like **Haryana**, the height of the building from the floor to the ceiling in each storey is to be more than eight feet. The school should not be more than seven storeys from the ground level and when it is more than three storeys from the ground level, proper and safe lift facility is provided. The carpet area for each student prescribed is not less than six square feet. Schools are required to provide sufficient area for playground, enough for all the students in the institution to assemble, and to play and watch at least two outdoor games at one time.⁴⁵

KERALA also has similar provisions. The locality in which the school is proposed is supposed to meet a proven educational need as revealed in school mapping carried out by the authorized agency and such educational need shall be certified by the local authority and the AEO.⁴⁶ **MADHYA PRADESH** has a unique rule that no school other than a recognized school or new school awaiting recognition in accordance with the provisions of this Act shall have the word "school" or its equivalent in any Indian Language as a part of its name.⁴⁷

IN MAHARASHTRA, schools are required to create an endowment fund and operate on a self-financed basis

42 Haryana School Education (Amendment) Rules, 2007

43 Himachal Pradesh Board of School Education Affiliation Regulations/Byelaws,1992(Amended February, 1995, November, 2006 & in August,2013)

44 The Karnataka Education Act, 1983

45 Karnataka Educational Institutions (Classification, Regulation and Prescription of Curricula etc.,) Rules, 1995

46 The Kerala Right of Children to Free and Compulsory Education Rules 2011

47 Madhya Pradesh Ashaskiya School Viniyam Adhiniyam 1975

with no financial assistance from the government. **The state government is required to constitute the scrutiny committee for the entire area of the State or different scrutiny committees** for different areas of the State for considering and recommending to the State Government the permission to be granted to the applicants for establishing a new school or up-grading an existing school based on inspection report obtained by the scrutiny committee. The report of the scrutiny committee is based on assessment of the school meeting

RTE norms, financial soundness, the extent of assets and its ability to setup the infrastructure of a school, its expertise and experience in the field of education and after the spot inspection, contain reasons for recommending grant of permission or, as the case may be, for rejecting the application seeking permission for establishing a new school or up-grading the school, and submit the report to the State Government on or before the 31st October of the year.⁴⁸

IN ODISHA ALSO THERE IS A COMMITTEE CONSTITUTED WHICH NEEDS TO BE SATISFIED THAT THE EDUCATIONAL NEEDS OF LOCAL AREA JUSTIFY EDUCATIONAL INSTITUTION, IT IS BEST LIKELY TO SERVE THE NEEDS IN THAT LOCATION, THERE IS OTHERWISE NOTHING OBJECTIONABLE, AND ONLY THEN GIVE PERMISSION. HOWEVER, THE CRITERIA FOR RECOGNITION, LIKE GUJARAT, ARE RELAXED IN EDUCATIONALLY BACKWARD DISTRICTS.⁴⁹

IN WEST BENGAL, as discussed earlier, the norms are elaborate. Specifically, the schools are required to be located in noise-free pollution free area, have a playground, class space of >400 sqft. It stipulates an enrollment of at least 40 effective enrolment in each class. The costs of the inspections conducted for recognition are to be met by the school.⁵⁰

The Central Board of Secondary Education has laid down essential conditions for providing affiliation. The schools have to be of non-proprietary character not vesting control in a single individual or members of a family, should have a School Management Committee as per RTE, should have received recognition

certificate and a no objection certificate from the state government, meet the land requirements elaborately provided as per the location, and meet the physical infrastructure requirements for classroom, labs, library, computer lab, math lab, water, toilets. **There have to be adequate finances, transparency of finances and fees, fee revision requires express approval of School Management Committee.** A special educator and counsellor are required. Schools are not allowed to take dual affiliation with same set of infrastructure and land. Initial affiliation is given for 3 years, with extension for 5 years. Schools are not allowed to work in two shifts unless prior approval, and no transfer to other management can be made without prior approval.

48 Maharashtra Self-financed Schools (Establishment and Regulation) Act, 2012

49 Orissa Education Act, 1969

50 West Bengal Board of Secondary Education (Recognition of Unaided Institution) Bye-laws, 2007

PROVISIONS	A P	A R	A S	B R	C H	C G	D L	G A	G J	H R	H P	J K	J H	K A	K L	M P	M H	M N	M L	M Z	N L	O D	P B	R J	S K	T N	T S	T R	U P	U K	W B	
Withdrawal of recognition if fail to remedy defects																																
Submission of annual report to the government																																
Taking over of school																																
Closure of private schools																																
Handing over property to government in event of school closure																																
Preschool																																
Requirement of registration of playschool/preschool																																
Prescribed norms and conditions for playschool/preschool																																

MONITORING AND INSPECTION

WHAT SOME STATES REGULATE

- Modalities of inspection including the minimum number of inspections or minimum period within which an inspection must be conducted for a school
- Content of what needs to be inspected
- Requirement of submission of regular reports
- Mode of maintenance of accounts and procedure for auditing accounts

Although almost all states require schools to be open for inspections, different states have different provisions with regards to this important regulatory function. Although literature showed that **no State**

fixes the minimum number of inspections or minimum period within which an inspection must be conducted for a school, but use a punitive approach, where poor performance on inspection invokes penalties.

It is important for accountability mechanisms to be **facilitative and not merely punitive**.⁵¹ Schools are typically required to maintain financial records, conduct audits and fully assist with the inspections of school accounts, and physical inspections by government representatives. The mode of **maintenance of accounts and procedure for auditing accounts is also provided for by states**.

IN ANDHRA PRADESH, inspection means **scrutiny of records**, registers and checking of physical specifications in regarding buildings, libraries, laboratories, playgrounds and the functionaries. Inspections can be conducted in any school and schools are bound to afford assistance. Manager shall comply with directions and suggestions given. If grievances, schools can then appeal to prescribed authority whose decision shall be final.⁵² Schools are required to maintain a list of 30 registers.⁵³ **IN ARUNACHAL PRADESH**, all private aided/unaided schools and tutorial/ coaching institutions are required to **submit periodical report/return** on academic activities involving financial expenditure.⁵⁴ The schools are required to be open to inspection by any officer authorized by the appropriate authority or the Director of School Education, Director of Medical Services, District Medical Officer or Health Officer of the local authority concerned, Civil Surgeon, Assistant Civil Surgeon or Head Officer authorized by the appropriate authority or the Director to examine the health of students of the sanitary conditions or the school and surroundings, or Deputy Commissioner or his deputed representative of the district. Any Education Officer from Department of Education can inspect at any point of time. All records of the school are open to inspection by any officer authorized by the Director of School Education or appropriate authority at any time,

and the school furnishes such information as may be necessary to enable the officer carry out inspection.⁵⁵

DELHI provides guiding principles for supervisory and inspecting staff, which are holistic and also ways to discharge the functions. Full inspections are expected to cover not less than three days and are to be intimated. In addition, inspectors can also visit without advance notice institutions to see progress, and follow-up. The inspections are meant to serve administrative, financial and educational purpose.⁵⁶

EVERY RECOGNISED SCHOOL IS EXPECTED TO BE INSPECTED AT LEAST ONCE IN EACH FINANCIAL YEAR.

The Director may also arrange special inspection of any school on such aspects of its working as may, from time to time, be considered necessary. The Director may give directions to the manager requiring the manager to rectify any defect or deficiency found at the time of inspection or otherwise in the working of the school. If the manager fails to comply with any direction, the Director may, after considering the explanation or report, if any, given by the manager, take such action as he may think fit, including withdrawal of recognition.⁵⁷ The Director may assign all or any of his functions relating to supervision and inspection to such officers subordinate to him, and as may be authorised by him in this behalf, including panel of persons with special knowledge and experience of different subjects taught in schools, to carry out inspection of a school. There is a provision to carry out surprise inspections and guidelines on how

51 Ambast, Shruti; Gaur, Ankita; Sangai, Ajey (2017). Regulation of Private Schools in India. New Delhi: Vidhi Centre for Legal Policy.

52 Andhra Pradesh Education Act, 1982 with amendments in 1987

53 Andhra Pradesh Education Department Rules 1986

54 Arunachal Pradesh Education Act 2010

55 Arunachal Pradesh Education Rules 201

56 Delhi Education Code.

57 The Delhi School Education Act, 1973

inspection should be made. Every inspection is meant to be as objective as possible and be aimed at bringing about improvements in the standards of teaching in the school. In making the inspection, academic work, library, games and sports, co-curricular administration, accounts, premises, discipline, rules etc. are also to be critically examined. There are stipulations that every inspecting officer shall inspect not less than fifty schools in a year and not less than ten per cent of the schools shall be inspected every year by an officer above the rank of an inspecting officer.⁵⁸ **KERALA** too has elaborate guidelines. The duties of an Inspector are divisible into administrative and academic. The administrative duties relate to the annual inspection of records, accounts, office routine, etc. It mentions that

the inspection of academic work is the more important work of the inspecting officer.⁵⁹

IN MEGHALAYA, there can be a revocation of the recognition if there is violation of any conditions, failure to maintain an average pass percentage with a minimum of 50% of Board for three consecutive years, irregularities in admission and registration process, and if violation of examination rules are found during inspections.⁶⁰ IN TAMIL NADU, every private school is expected to furnish any information sought for by any person or authority as authorised by the Government, particularly during the conduct of census or election or any survey including the National Achievement Survey or the State Level Learning Survey.⁶¹

SCHOOL CLOSURE, WITHDRAWAL OF AFFILIATION AND PENALTIES

WHAT SOME STATES REGULATE

- Modalities of inspection to be adopted
- Notice to be given to schools prior to taking action
- Penalties for violations in instances of provisions, including the imposition of fines, closure and other measures
- Specific criteria to be applied for closure or voiding of recognition of schools

These regulations govern the conditions inviting closure of private schools, withdrawal of recognition, and procedure for taking over the management. Apart from State specific laws, the **RTE Act lays down minimum standards for unaided private schools** to be recognised

by the government at the Central level and also lays down non-compliance with the norms and standards as grounds for school closure and imposition of penalty in the form of fine of Rs 100000 and for continuing contravention a fine of Rs 10000 per day.

58 The Delhi School Education Rules 1973

59 Kerala Education Department (Inspection) Code 1966

60 Meghalaya Recognition of Secondary and Higher Secondary Schools Rules 2012

61 Tamil Nadu Private Schools (Regulation) Act 2018

Most of the provisions in state rules are based on the RTE Model Rules which stated that the school should be open to inspection by any officer authorized by the State Government/Local Authority; that the school should furnish reports and information as may be required by the Director of School Education/Deputy Director of School Education from time to time and comply with official instructions. It also suggested that after the inspection is carried out, the inspection report shall be placed by the Deputy Director of School Education in public domain and schools found to be conforming to the norms, standards and the conditions shall be granted recognition by the Deputy Director of School Education within a period of 15 days from the date of inspection. Schools that do not conform to the norms, standards and conditions mentioned in sub-rule (l) shall be listed by the Deputy Director of School Education through a public order to this effect; and any time within the next two and a half years such schools may request the Deputy Director of School Education for an on-site inspection for grant of recognition. Schools which do not conform to the norms, standards and conditions mentioned in sub-rule (1) after three years from the commencement of the Act, shall cease to function.

In addition, **state legislation and affiliation rules also provide grounds for withdrawal of recognition and affiliation.** **IN ANDHRA PRADESH**, withdrawal of recognition can happen if a school fails to fulfil conditions of recognition, fails to comply with orders of competent authority with regards to accommodation, equipment, syllabi, textbooks, appointment, punishment or dismissal of teachers, or denies admission on grounds of religion, race, caste language, directly or indirectly encourages propaganda or practice wounding religious feelings, employs any teacher whose certificate has been cancelled or suspended, fails to remedy the defects in the instruction or contravenes any provision of the Act. Recognition can be withdrawn in view of public interest. A private institution cannot be closed down without notice of not less than one academic

year.⁶² Registered schools' registration can be cancelled after giving 30 days' notice.

IN ARUNACHAL PRADESH, IN ADDITION TO THE GROUNDS LIKE ANDHRA PRADESH, A SCHOOL'S RECOGNITION AND AFFILIATION CAN BE WITHDRAWN IF THE SCHOOL COLLECTS UNAUTHORIZED FEE/FUND ETC. WITH PROFIT-ORIENTED MOTIVE.

Recognition can also be withdrawn if the school fails to ensure safety measures in the educational institution against hazards such as fire, electric combustion, unsanitary drinking water, tap and separate toilets for boys and girls including water logging and unsafe location etc., fails to fulfill the standard norms of area of school building, structure and sufficient arrangement of separate entry and exit, ventilators, two emergency exit doors, fire extinguishers etc. including ladder entry and exit separately measuring minimum 1.5 meters wide where the school is established in multi-storied building.⁶³ In Assam, the State government can withdraw administrative recognition and close down institutions. The Director may take assistance of police force if situation demands.⁶⁴

IN BIHAR, proceedings for withdrawal of affiliation may be initiated by the Board after reasonable notice to the school Management Committee of non-observance of the following conditions by the schools: **i) Financial irregularities** including diverting of funds for purpose other than those provided for in these Bye-laws. **ii) Engagement in activities prejudicial to the interest of the State, inculcating or promoting feelings of disloyalty**

62 Andhra Pradesh Education Act, 1982 with amendments in 1987

63 Arunachal Pradesh Education Act 2010

64 Assam Non-government Educational Institutions (Regulation and Management) Act 2006

or dis-affection against the Government established by law. iii) **Encouraging or tolerating disharmony/** hatred between different sections of the Society. iv) Non-fulfillment of conditions laid down regarding deficiencies to be removed even after due notice. v) Disregard of rules and conditions of affiliation even after receiving warning letters. vi) Hindrance in the smooth functioning of the school on account of dispute between rivalries within the school management. vii) Poor academic performance of the school for three consecutive years in not being able to kept at least 50 percent of passes of the general pass percentage. viii) Non-availability of proper equipment/ space/ staff for teaching a particular subject. ix) Any other misconduct in connection with the admissions/ examinations/ any other area which in the opinion of the Board warrants immediate disaffiliation of the school. x) In case of transfer of property/ sale of school by one Society/ Management/ Trust to another Society/ Management/ Trust through agreement/ Sale deed. xi) Any violation of the norms that have been prescribed by the Hon'ble Supreme Court of India in the writ petition (Criminal) nos. 666-70 of 1992 Vishaka and others V/s State of Rajasthan and others delivered on 13-08-1997 for protection of women from sexual harassment at the work place if established would attract strict action against the institution which may even lead to disaffiliation.⁶⁵

IN DELHI, no managing committee shall close down a recognised school, not being an unaided minority school, or an existing class in such school without giving full justification and without the prior approval of the Director, who shall, before giving such an approval, consult the Advisory Board.⁶⁶ **IN HIMACHAL PRADESH**, as in the case of **BIHAR**, proceedings for withdrawal of affiliation may be initiated in case any institution is found guilty of following after reasonable notice (a) Noncompliance of conditions laid down regarding discrepancies/ drawback to be removed; (b) Disregard of rules and conditions of affiliation; (c) **Not paying salaries** to teachers and other employees, at least as per norms fixed; (d) Financial irregularities

including channelling of funds for purposes other than those provided for in these Regulation/ Bye-laws; (e) Engagement in activities prejudicial to the interest of the State, inculcating or promoting feelings of disloyalty or disaffection against the Government established by law; (f) Hindrance in the smooth functioning of the school on account of dispute between rivalries within the school management; (g) Non-availability of proper equipment/ space/staff for teaching a particular subject; (h) Any other misconduct in connection with the admissions/ examinations/any other area which in the opinion of the Board warrants immediate disaffiliation of the school; (i) Any violation of the norms that have been prescribed by the Hon'ble Supreme Court of India in the writ petition (Criminal) nos. 666-70 of 1992 Vishaka and others V /s State of Rajasthan and others delivered on 13-81997 for protection of women from sexual harassment at the work place if established would attract strict action against the institution which may even lead to disaffiliation; (j) Encouraging disharmony / hatred between different sections of the society. If the school is found to have encroached upon government land, the head of institution concerned can be issued a notice asking to show cause within one month failing which the institution shall be declared disaffiliated straightway.

IN KARNATAKA, where any local authority or the Governing Council of any private educational Institution, (a) fails to fulfill all or any of the conditions of recognition or fails to comply with the orders of the competent authority in regard to accommodation, equipment, syllabi, text books, appointment, punishment and dismissal of teachers; (b) **denies admission to any citizen on ground of religion, race, caste, language or any of them.** (c) directly or indirectly encourages in the educational institution any propaganda or practice wounding the religious feelings of any class of citizens of India or insulting religion or the religious belief of that class (d) employs or continues to employ any teacher whose certificate has been cancelled or suspended by the competent authority after due enquiry or who has been considered by the competent authority after

65 Bihar School Examination Board Affiliation Bye-laws 2011

66 The Delhi School Education Rules 1973

due enquiry to be unfit or undesirable to be a teacher arbitrary the service of a teacher or fails to comply with the orders of competent authority in this regard; (e) fails to remedy the defects in the instruction or accommodation or deficiencies in the management or discipline within such time as may be specified therefor by the competent authority; (f) contravenes any of the provisions of this Act, the rules and orders made thereunder, the competent authority may, for reasons to be recorded in writing, withdraw the recognition of the institution or any other action deemed necessary.

THE STATE GOVERNMENT CAN ALSO, IN THE PUBLIC INTEREST WITHDRAW RECOGNITION AFTER FOLLOWING DUE PROCESS.

No private educational institution shall be closed down or discontinued, unless a notice of not less than one academic year and indicating the intention to do so, has been given by the Governing Council to the officer authorised by the competent authority in this behalf.⁶⁷ **IN ODISHA, affiliation can be withdrawn on many grounds – including inability to maintain strength, misutilization of funds,** or when pass percentage is less than half for three consecutive years.⁶⁸

The **Council for the Indian School Certificate Examinations** can withdraw affiliation for following reasons: (a) non-fulfilment of assurances given by the school with regard to deficiencies to be removed within the specified period even after having been given due notice. (b) If it is reported that the school is **indulging in any kind of malpractice.** (c) Failure on the part of the school to conform to the requirements of the Council as laid down in the regulations and syllabi or for not

abiding by any other decision of the Council. (d) Failure on the part of school to fulfil the requirements laid down by the Council for proper arrangements and fair conduct of its examinations. (e) Disregard on the part of the school of the rules and conditions on the basis of which affiliation has been granted to the school after having been given due notice by the Chief Executive and Secretary. (f) If the school does not carry out the notified decisions of the Council to the satisfaction of the Chief Executive and Secretary. (g) On non-implementation of a directive issued by the office of the Council. (h) On the consideration that the school is not providing amenities and facilities as prescribed by the Council from time to time. (i) If it is established that the school has in contravention of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995 denied admission to a child because of disability. (j) Non-compliance of the applicable laws, Rules, Regulations, Byelaws, Directives and Guidelines of the State/Central Government and Courts in respect of all matters concerning the administration and running of the school. (k) **Financial irregularities,** engaging in activities prejudicial to the interest of the Council and/or any other misconduct relating to admissions, examinations, etc. (l) If it is established that any school to which the provisions of The Right of Children to Free and Compulsory Education Act, 2009 are attracted has contravened the same. (m) Any other matter which the Council considers sufficiently serious for delisting / de-affiliation.

Thus, we find that besides the RTE provisions, states have strict guidelines on conditions that can invite withdrawal of recognition, or affiliation or school closure.

67 The Karnataka Education Act, 1983

68 Orissa Education Act, 1969

COMMERCIALIZATION OF EDUCATION

WHAT SOME STATES REGULATE

- Tax exemptions to educational institutions and individuals sending children to private schools
- Definition and regulation of surpluses earned by schools and ensuring education is not for profit. Any surpluses to be invested or utilized for educational development only.
- Disclosure and regulation over receipt of donation/contribution or other contributions in cash, kind
- Use of school buildings only for educational purpose, not commercial, political purposes
- Allowing parents to purchase uniform, textbooks and other materials from any vendor beyond the school's preferred providers
- Mechanisms for maintenance of school accounts
- Frequency and extent to which school fees can be raised

The commercialization of education and educational services by private schools is an issue of growing concern. This needs to be seen in conjunction with the privatization of education that is supported indirectly by the tax regime. **There are tax incentives that support parents sending children to private schools.** These are applicable centrally under the provisions of the Income Tax Act, 1961. The deductions towards the tuition fees paid for up to two children⁶⁹ and deductions of the interest payment on any education loans taken for seven years from the year in which the interest payment on the loan begins.⁷⁰ These incentives support access to private schools among the tax-paying households. Similarly, **tax incentives are provided to educational institutions.** Even when set up as a trust or society with charitable purposes, **they are allowed to charge fees for their services.** The **Income Tax Act** does not restrict

how the monies collected from fees should be used, but there is a ceiling that 85% of the total receipts including income from property should be used with the same fiscal year towards provision of the charitable activities and services and only 15% can be accumulated in specified instruments. More than 15% of the receipts can be accumulated if there is a specified purpose for a maximum of ten years. **The education funds can receive funds without the liability of income tax.**⁷¹ Furthermore, the **Ministry of Finance** has clarified that services by way of pre-school education, and education up to higher secondary education or equivalent, education as part of a curriculum for obtaining qualification recognised by any law in force and education as part of an approved vocational education course is listed in a negative list of services⁷² and are therefore exempt from service tax; and of auxiliary educational services or renting of

69 Section 80C subsection 2(vii) of the Income Tax Act 1961. For a detailed discussion, see Rao, Kavita (n.d.). Tax Incentives for Education: an assessment. New Delhi: National Institute of Public Finance and Policy.

70 Section 80E of the Income Tax Act, 1961

71 Section 10 (23c) of Income Tax Act, 1961

72 Under Section 66D of the Finance Act 1994. MANU/DSTX/0036/2013 Ministry of Finance, Service Tax Circular No.: 172/7/2013-Service Tax Date: 19.09.2013

immovable property are also exempted from service tax.⁷³ These provisions while exempting education providers from service tax, need to be seen along with other provisions that are directed towards addressing commercialization of education. In *Queen's Educational Society vs. Commissioner of Income Tax*, the **Supreme Court** considered the parameters for judging whether an institution exists solely for educational purpose and not for profit. It was observed that the fact, that the **institution makes profit, does not necessarily mean it exists for profit.**⁷⁴ Similar view was expressed by the Supreme Court in case of *Visvesvaraya Technological University vs. Assistant Commissioner of Income Tax*.⁷⁵

In this section, we will examine **provisions that relate to regulation of school finances, and prohibition of commercial activities run by the schools.** The regulation of fees is an important dimension of commercialization and is discussed in the next section. As suggested in the Model RTE Rules,

ALMOST ALL STATE RULES INDICATE THAT SCHOOLS SHOULD BE RUN NOT-FOR-PROFIT AND THAT SCHOOL PREMISES ARE USED ONLY FOR THE PURPOSES OF EDUCATION AND SKILL DEVELOPMENT PURPOSES ONLY.

These remain the two key provisions reflected in almost all the state provisions and elaborated further.

ANDHRA PRADESH requires that fees or donations will not be collected in cash or in kind.⁷⁶ **In Arunachal Pradesh, the collection of fees such as capitation, charity, lottery or any other similar cases is not allowed in schools of all managements.** However, voluntary donation/contribution in cash or kind for the noble cause of education is encouraged for development of educational facilities and institutional improvement. The school management are required to intimate to the competent authority within 60 days from the date of acceptance of donation/ contribution. The premises of all schools are also to be strictly utilized for the educational purpose only. The school building or other structure or the grounds are not used during the day or night for commercial or residential purposes (except for the purpose of residence of employees of the school) or for communal, political or non-educational activity of any kind whatsoever.⁷⁷ A similar provision is also found in **DELHI**.

IN ASSAM, no levy of any kind of fee can be imposed in excess of fees fixed in the scheme prepared by management and approved by the director. **Funds are to be utilized for the purposes collected.** Surplus fund shall be invested and utilized towards educational development only.⁷⁸

BIHAR has elaborate provisions on curbing commercialization. Details regarding Class-wise book list, particulars of uniform, Notebook etc. are to be displayed on the school Notice Board as well as on

73 "Auxiliary educational services" means any services relating to imparting any skill, knowledge, education or development of course content or any other knowledge-enhancement activity, whether for the students or the faculty, or any other services which educational institutions ordinarily carry out themselves but may obtain as outsourced services from any other person, including services relating to admission to such institution, conduct of examination, catering for the students under any mid-day meals scheme sponsored by Government, or transportation of students, faculty or staff of such institution. Government has issued a notification No.25/2012-ST dated 20th June, 2012, exempting certain services. See Sl.no.9. MANU/DSTX/0036/2013 Ministry of Finance, Service Tax Circular No.: 172/7/2013-Service Tax Date : 19.09.2013.

74 372 ITR 699 dated 16 March 2015.

75 384 ITR 37 dated 22 April 2016.

76 Andhra Pradesh Education Department Rules 1986

77 Arunachal Pradesh Education Rules 2010

78 Assam Non-government Educational Institutions (Regulation and Management) Act 2006

its website. The parents/guardians are at liberty to procure these from anywhere, including the market as is convenient to them. **The schools cannot make it compulsory for parents/guardians to purchase the same from a shop/ place/ institution determined by them. Any such conditions, imposed by a school, constitutes an offence on the part of the school, making them liable for punishment.** The rules also provide for regulation of accounts. The private school is required to maintain its accounts and records in a proper manner and produce it before the Fee Regulatory Committee on demand by the Committee. Accounts are to be audited in each financial year by a Chartered Accountant.⁷⁹ No part of income from the institution can be diverted to any individual in the Trust/ Society/ School Management Committee or to any other person. The savings, if any, after meeting the recurring and non-recurring expenditure and contributions to development, depreciation and contingency funds may be further utilized for promoting the school. The accounts should be audited and certified by a Chartered Accountant and proper accounts statements should be prepared as per rules. A copy each of the Statement of Accounts should be sent to the Board every year. The channeling of funds by the management to person(s) or enterprise other than for furthering education in the school will contravene the rules governing affiliation and call for appropriate action by the Board. **Fees charges should be commensurate with the facilities provided by the institution.** Fees should normally be charged under the head prescribed by the Department of Education of the State for schools of different categories. No capitation fee or voluntary donations for purpose of seeking admission in the school or for any other purpose will be charged/ collected in the name of the school. In case of such malpractices, the Board may take appropriate action leading to disaffiliation of the school. In case a student leaves the school for such compulsion as transfer of parents or for health reason or in case of death of the student before completion of the session, pro-rata return of quarterly/ term/ annual

fees should be made. **The fees should not be revised during the mid-session.** The Society/Trust running the school has a critical and key role to play and it should ensure that the school is run as a community service and not as a business and that commercialization does not take place in the school in any shape whatsoever. It should also ensure that the funds accruing from the school are spent for the benefit of the school and for its expansion.⁸⁰

IN CHANDIGARH, schools should follow instructions regarding fee structure and admission procedures as issued by the Chandigarh administration.⁸¹ **IN DELHI,** no fee, contribution or other charge can be collected from any student by the trust or society running any recognised school; whether aided or not. Every fee, contribution or other charge collected from any student by a recognised school, whether aided or not, is supposed to be collected in its own name and a proper receipt is to be granted by the school for every collection made by it. Income derived from collections for specific purposes shall be spent only for such purpose. **Income derived by an unaided recognised schools by way of fees shall be utilised in the first instance, for meeting the pay, allowances and other benefits admissible to the employees of the school.** Provided that savings, if any, from the fees collected by such school may be utilised by its managing committee for meeting capital or contingent expenditure of the school, or for one or more of the following educational purposes, namely:— (a) award of scholarships to students; (b) establishment of any other recognised school, or (c) assisting any other school or educational institution, not being a college, under the management of the same society or trust by which the first mentioned school is run. The savings should be arrived at after providing for the (a) pension, gratuity and other specified retirement and other benefits admissible to the employees of the school; (b) the needed expansion of the school or any expenditure of a developmental nature; (c) the expansion of the school building or for the expansion or

79 The Bihar Private Schools (Fees Regulation) Act, 2019

80 Bihar School Examination Board Affiliation Bye-laws 2011

81 Chandigarh Allotment of Land to Educational Institutions (Schools), Etc. on Lease-hold Basis in Chandigarh Scheme, 1996

construction of any building or establishment of hostel or expansion of hostel accommodation; (d) co-curricular activities of the students; (e) reasonable reserve fund, not being less than ten per cent, of such savings. (3) Funds collected for specific purposes, like sports, co-curricular activities, subscriptions for excursions or subscriptions for magazines, and annual charges, by whatever name called, are meant to be spent solely for the exclusive benefit of the students of the concerned school and should not be included in the savings. Every unaided recognised private school is supposed to submit returns and documents.⁸² There was a recommendation in Delhi for allowing skill-based learning to be imparted in the school premises.⁸³

IN GOA, every recognized unaided school should have “Recognised Unaided School Fund” and all the income accruing to the school (a) by way of fees or other charges, and payments which may be realized by the school for other specified purposes, and any other contributions, endowments, gifts. Income derived by unaided schools by way of fees or other charges shall be utilized only for such educational purposes; and charges and payments realized and all other contributions, endowments and gifts received by the school shall be utilized only for the specific purpose for which they were realized or received. The managing committee of every recognized private school is required to file every year with the Director a duly audited financial and/other returns as prescribed, and every such return is to be audited as prescribed.⁸⁴

IN GUJARAT, profiteering is defined to mean any amount accepted in cash or kind directly or indirectly which is in excess of the fee fixed or approved as per the provisions of this Act and includes profit earned from school by trust or company associated with the school

in any manner whatsoever.⁸⁵ **IN HARYANA,** the Fee and Fund Regulatory Committee at the Divisional Level can receive complaints, conduct inquiries and make recommendations for action. It can direct the concerned institution to refund the capitation fee or fee in excess of the fee as notified by the school, as the case may be; (ii) recommend withdrawal of the recognition/affiliation of the school and the Director shall pass the orders accordingly.⁸⁶

IN HIMACHAL PRADESH, the **privately managed Institutions shall not carry out any commercial activities** in the Institution e.g. **sale of uniforms, ties, belts,** badges, shoes etc. The affiliation of the schools indulging in such activities shall be cancelled. Private institutions who are affiliated to the HP board if found guilty of activities like; working knowingly for commercialization of education setting aside the guidelines laid by the H.P. Board of school education or charging higher fees or dues willfully, can attract strong action in the form of financial penalty, or cancelling the affiliation. It is the responsibility of the Society/Trust to ensure that the school is running as a community service and not as a business and that commercialization does not take place in the school in any shape whatsoever. It should also ensure that the funds accruing from the school are spent for the benefit of the school and for its expansion and exercise control over the school management committee and shall approve the budget/ tuition fees and annual charges etc. for the school.⁸⁷ **IN JHARKHAND,** like other states, the school building or structures or premises are to be used for the purpose of education only and parents/students are not be compelled/persuaded to purchase books or other materials like Uniform and Shoes etc. from the kiosks situated in school premises.⁸⁸

82 The Delhi Education Rules 1973

83 Recommended by the Report of the Review Committee on the Delhi School Education Act and Rules 1973 (Shailaja Chandra report).

84 The Goa, Daman and Diu School Education Act, 1984 and Goa, Daman and Diu School Education Rules, 1986.

85 Gujarat Self-Financed Schools (Regulation of Fees) Act, 2017

86 Haryana School Amendment Rules 2014

87 Himachal Pradesh Board of School Education Affiliation Regulations/Byelaws, 1992 (Amended February, 1995, November, 2006 & in August, 2013)

88 Jharkhand Education Tribunal (Amendment) Act, 2017

KARNATAKA has elaborate provisions on this matter. Every private educational institution is required to maintain a list of the properties, both moveable and immovable owned or possessed by it. All moneys collected, grants received and all property held by the management on behalf of a private educational institution are to be utilised for the prescribed purposes and the purposes for which they are intended and are to be accounted for by the private educational institution. The funds of the private educational institution are to be maintained in a prescribed manner and the Governing Council is required to reimburse to the account of the private educational institution any money which it has failed to account for. If the money is not so reimbursed within the time fixed, the competent authority shall recover the same from the Governing Council, as arrears of land revenue and credit it to the account of the institution.⁸⁹ The rules also regulate the purchase of uniform clothing and text books from the school or from a shop etc., suggested by school authorities and stitching of uniform clothing with the tailors suggested by the school authorities, and keeps the option open to the students. The school authorities cannot make any compulsion in this regard.⁹⁰

NO EDUCATIONAL INSTITUTION CAN COLLECT ANY FEES OR AMOUNT OR ACCEPT DEPOSITS IN EXCESS OF THE AMOUNTS NOTIFIED.

Every educational institution is expected to issue an official receipt for the fee or capitation fee or deposits or other amount collected by it. All monies received by

any educational institution by way of fee or capitation fee or deposits or other amount are to be deposited in the account of the institution, in any Scheduled Bank and spent for the improvement of the institution and the development of the educational facilities and for such other related purpose. The Government may require any education institution to submit their programmes or plans of improvement and development of the institution for the approval of the Government.⁹¹ No donation or voluntary donation or any money by whatever name called can be received by the Educational Institution, other than prescribed fee as notified by the management, before, during or after admission and during entire stay of the student in the concerned educational institution from parents, or any person in connection with such admission. **No donation made in connection with any admission shall be construed as voluntary donation.** For the purpose of this rule, parents or persons, include (1) brother, sister, guardians, or any relative of student / student's parents, a Company or Association or trust or a firm or society or any other institution by whatever name called in which the person or the parents have any proprietary rights or a Manager or director of such institution.⁹²

IN MEGHALAYA, unaided recognized school are expected to have a fund called the Recognized Unaided School Fund and all income accruing shall be credited to that fund.⁹³

IN TAMIL NADU, no private school can collect any other charge or receive any other payment by whatever name called, except the fee fixed by the Fee Determination Committee constituted under the Tamil Nadu Schools (Regulation of Collection of Fee) Act, 2009. ⁹⁴ **IN TELANGANA**, like in other states, all the money collected, grants received and other property held by or on behalf of a private school is to be utilized for the purposes for which they are intended and is to be accounted for by the educational agency. **The Government can regulate**

89 The Karnataka Education Act 1983

90 Karnataka Educational Institutions (Classification, Regulation and Prescription of Curricula etc.,) Rules, 1995.

91 Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984.

92 Karnataka Educational Institutions (Regulation of Certain fees and Donations) Rules, 1999.

93 Meghalaya School Education Act 1981

94 Tamil Nadu Private Schools (Regulation) Act 2018

the tuition fee or any other fee that may be levied and collected by any educational institution in respect of each class of students. No educational institution should collect any fees in excess of the fee notified and every educational institution is expected to issue an official receipt for the fee collected by it.⁹⁵

CBSE affiliation guidelines provided in the byelaws stipulate that multiple use of school building is allowed for the limited purposes of promotion of education and skill development including vocational education but **the school should not use its building and infrastructure for any commercial activity**. Running of coaching classes is not approved by the board. In the case of *Association of school vendors and others vs Central Board of Secondary Education and others* and in the case of *Parents Students Welfare Association vs the Directorate of Education and Anr*, in accordance with the orders of the Delhi High Court, the Board’s circulars are withdrawn and following directions were issued – the schools are permitted to open a small outlet inside school premises to facilitate the children. If the school

makes books available, both NCERT and the non-NCERT, stationery and uniform items for sale in the school premises through these, then the sale must be done without coercion on students/parents to buy the same from these shops.

THE SCHOOL SHALL NOT COERCE PARENTS/STUDENTS FOR BUYING BOOKS AND ITEMS FROM ANY OTHER SPECIFIED VENDORS ALSO. NO ACTIVITY CAN BE CARRIED OUT ON SCHOOL PREMISES THAT IS WHOLLY UNCONNECTED WITH EDUCATION.

Schools should display class wise details of textbooks prescribed on its website.⁹⁶

TABLE 3. PREVENTION OF COMMERCIALIZATION OF EDUCATION

PROVISIONS	A P	A R	A S	B R	C H	C G	D L	G A	G J	H R	H P	J K	J H	K A	K L	M P	M H	M N	M L	M Z	N L	O D	P B	R J	S K	T N	T S	T R	U P	U K	W B
School buildings and premises to be used only for education and skill development																															
No restriction on vendors for school supplies																															
Government permission required for any alienation of property																															

95 Telangana Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983

96 Judgment of the High Court of Delhi dated 21.02,2018 in WP Civil 7414/2017 and CM Nos 30616/2017 and 30167/2017.

PROVISIONS	A P	A R	A S	B R	C H	C G	D L	G A	G J	H R	H P	J K	J H	K A	K L	M P	M H	M N	M L	M Z	N L	O D	P B	R J	S K	T N	T S	T R	U P	U K	W B
School funds and moveable property to be utilized for intended purpose																															
All monies to be deposited in a bank																															
Surplus funds to be invested towards educational development only																															
Schools not run for profit																															
Submit audited statement of account to the education department																															

FEE REGULATION

WHAT SOME STATES REGULATE

- Level by which fees could be raised every year
- Prohibition of capitation fees and other such fees
- How the revenue and/or savings could be used, including requirement that fees not be diverted to society or trust or other institutions allied to the school management
- Process prescribed for regulating fee hikes including formation of dedicated structures for the same
- Modalities of how fees can be utilized
- Process of regulation of complaints by parents and penalties for violations of regulation

The regulation of fees charged by schools is a new and contested area. There are considerable differences across the states in terms of the model prescribed for regulating fees in the state. We will first look at the legal challenges that the state legislation were confronted with and then examine the provisions of these legislation.

In **Atulkumar Niranjanbhai Dave versus State of Gujarat**,⁹⁷ the petitioner challenged the competency of the state government to determine and regulate fees of self-financed schools affiliated to CBSE. The **Gujarat High Court held there is no Central Act or other statutory body to regulate CBSE schools. Even though Bye-laws provide for disaffiliation in case of charge of excess fee, in CBSE Bye-laws, there is no effective mechanism provided for regulation of collection of fees.** States have concurrent power to legislate regarding matter of education, CBSE insists for no objection certificate from State Govt., so that there may not be any conflict between rules and regulations framed by State Govt. regarding school education and rules and regulations of CBSE. It is the bounden duty of State to ensure that private schools in State do not indulge in profiteering in name of imparting education. There has to be mechanism to check private schools from charging exorbitant fees...it is evident that **State Government has the power to regulate collection of fees in CBSE schools.** Thus, State Govt. is competent to legislate with regard to subject of determination of fees charged by CBSE, ICSE and IB Schools.

In the **Diocese of Varanasi Education Society and Ors. vs State of U.P. and Ors**,⁹⁸ the constitutional validity of the act was challenged by the petitioner, a **minority institution** on the count that as per article 30(1) of the Constitution of India, no interference in administration of minority institutions can be made by the State authorities statutorily or otherwise. The Court held that the provision on its face is reasonable and is a statutory effort to stop commercialization of education and exploitation of the students joining educational

institutions including minority institutions. While assessing constitutional validity of a provision at the scale of right given under Part-III of the Constitution of India, it must be kept in vision that ultimately the rights given protects the persons/citizens/legal entities, as the case may be, from arbitrariness, unreasonability, unjustifiability and fancy. If a provision is just and reasonable and otherwise satisfies the four corners of Article 13 of the Constitution of India, it must be held constitutionally acceptable to extend the protection of any right given under Part-III. On fair analysis of the Act of 2018, we find it to be a legislation to ensure easy accessibility to each and every citizen and further to expand fairness and reasonability in administration of the institutions, including minority institutions, without interference therein for broader interest of the ultimate consumer, as such we do not find any violation of Article 30(1) of the Constitution of India while introducing U.P. Self-Financed Independent Schools (Fee Regulation) Act, 2018.

In **Mayur Public Secondary and others vs State of Rajasthan And Ors**,⁹⁹ the Rajasthan High Court pronounced on the petition that challenged the validity of Rajasthan Schools (Regulation of Fee) Act, 2016. The court held, the petitioners have set out a case that the restrictions/measures and its enforcement methodology envisaged therein are arbitrary and unreasonable affecting their autonomy to the hilt. We may hasten to add that entire edifice of challenge in these petitions is alleged infraction of Article 19(1)(g) of the (33 of 33) [CW-5080/2017] Constitution, which indisputably is not an absolute fundamental right. As observed hereinabove, the said fundamental right is subject to reasonable restrictions and such restrictions are permissible as they are aimed at seeking laudable objectives in the larger public interest. Therefore, viewed from any angle, the impugned provisions of the Act as well as Rules are intra-vires of the Constitution not being in violation of Article 13(2) and 19(1)(g) of the Constitution.

97 [2017 Indlaw GUJ 3672] dated 27 December 2017 Gujarat High Court

98 Writ C No. 709 of 2019 Dated 2 July, 2019, Allahabad High Court

99 D.B. Civil Writ Petition No. 5080/2017 Dated 14 August, 2019

Thus, the **challenges to the fee regulation legislation in Gujarat, Uttar Pradesh and Rajasthan** were dismissed and the validity of these state legislation has been upheld. Let us now look at the state legal provisions.

IN ANDHRA PRADESH, legislation prescribes how the the fees collected from the students shall be allocated as to meet the following requirements: - a) 5% of the fees collected shall be earmarked as personal income to the management b) 15% of the fees collected shall be utilized for the maintenance of the institutions towards expenditure involving the building rent, electricity and water charges, stationery etc., required for the office payments to be made to menials and auditors, purchase of library books, chemicals, specimens and other material required for the laboratory and

expenditure involving the upkeep of the institutions etc., c) 15% of the fees collected shall be earmarked for the developmental activities of the institution i.e. expenditure involving opening of additional courses, classes, sections and upgradations of the institutions, construction of additional accommodations, acquiring costly equipment and furniture, purchase of land for the use of the institutions and the like; d) 50% of the fees collected shall be earmarked towards payment of salaries to the staff: e) 15% of the fees collected shall be earmarked as management's contribution towards staff benefits like gratuity, teachers provident fund, Group Insurance scheme etc. This is the only legislation that provides such a schema and allows teacher salaries to be linked to school fees.

THE BIHAR PRIVATE SCHOOLS (FEES REGULATION) ACT, 2019 ALLOWS THE SCHOOLS TO INCREASE THE FEES UP TO A MAXIMUM OF SEVEN PERCENT OVER AND ABOVE THE PREVIOUS ACADEMIC YEAR, FOR ALL TYPES OF FEES, AS PER REQUIREMENTS.

In case of any increase of fees more than that, it shall have to justify it based on facts. Entry fees for admission in a class/course, Re-admission fees, development fees, monthly tuition fees, annual fees and costs of books, teaching materials, uniform, transportation etc are to be determined by the private school. The school is required to display the details of all types of fees of last year and the present year for the information of general public on its notice board as also on its official website. The State Government has the power to revise the seven percent limit from time to time. (5) Any increase of more than seven percent proposed by a school is subject to due approval of the Fee Regulatory committee after its detailed scrutiny. The power of considering the fees fixed beyond seven percent over and above the previous year shall be vested in the Fee Regulatory Committee. The penalties levied on schools for violations are: For first offence, maximum Rs.-1,00,000/- (one lakh); (ii) For

every subsequent offence, Rs- 2,00,000/- (Two lakh) per offence. (iii) In case of not depositing determined penalty within a month, or in the case of commission of repeated offences, the Fee Regulatory Committee will have power to make recommendation of cancellation of recognition or approval of the private school or any other course for which the Divisional Commissioner received complaint in respect of the private school. **(iv) If the Guardian submits complaint on exorbitant increase of fees or any other point with evidence and affidavit, the Fee Regulatory Committee shall take decision within 60 days.** (v) On being not satisfied with the decision taken at the Fee Regulatory Committee headed by the Divisional commissioner, any party may prefer appeal as per rules before the State Appellate Authority.

IN PUNJAB¹⁰⁰ AND CHANDIGARH¹⁰¹, factors to be considered while the fixing and increasing fees are –

100 Punjab Regulation of Fee of Unaided Educational Institution Act 2016

101 The Punjab Regulation of Fee of Unaided Educational Institution Act 2016 was extended in 2019 to UT of Chandigarh.

infrastructure and facilities available or to be made available, investment made and salaries paid to the teachers and staff, future plans for expansion and betterment of institution subject to restrictions of non-profiteering and noncharging- of capitation fee, the fee fixed should be displayed in a conspicuous place.

FEES CANNOT BE DIVERTED TO THE SOCIETY OR TRUST OR ANY OTHER INSTITUTION.

Every unaided educational institution are required to upload expenditure account and balance sheet on its website, not charge any kind of cost from the parents, disclose complete fee structure at the beginning of the academic year in the booklet issued along with the admission form and also be posted in its website, not raise the fee anytime during the academic session. No part of the income can be diverted to any individual or society or SMC or any person. Savings should be utilized for promoting the institution. Unaided educational institution is competent to fix its fees and it may also increase the same after taking into account the need to generate funds to run the institution and to provide facilities necessary for the benefit of the students – provided that increase in fee shall not exceed 8% of the fee of the previous year, provided that while fixing fees or increasing fee, the institution cannot indulge in profiteering and it cannot charge capitation fee. While fixing and increasing fees, factors to be considered are – infrastructure and facilities available or to be made available, investment made and salaries paid to the teachers and staff, future plans for expansion and betterment of institution subject to restrictions of non-profiteering and noncharging of capitation fee, the fee fixed should be displayed in a conspicuous

place. Fees are not diverted to the society or trust or any other institution. A regulatory body is set up to hear complaints with regard to charging excessive fee, to ensure schools are not indulging in commercialization of education, to check the fee structure is kept within limits, strike balance between autonomy of schools and measures to be taken to avoid commercialization, to check excessive hike in fee with the motive to earn profit, to ensure that increase in the fee is justified and necessitated by the circumstances like increase in expenditure or because of needed developmental activities and does not result into profiteering, to check that the funds charged are not diverted to any other purpose. Unaided Educational Institution Development Fund is to be constituted, and following will be credited to it – fee, charge, funds, other charges, contributions and endowments, and gifts. The Funds shall be utilized for the betterment and development of the institution. **The Fund or any profit accrued therefrom shall not be used for personal gains or business or enterprise, it should be used for activities that are beneficial to the students.** No amount whatsoever shall be diverted to the society trust or any other institution, except under the management of the same society or Trust. Penalties include a fine; on third contravention, penalty is withdrawal of recognition and refunding excess fees.

IN GUJARAT,¹⁰² a Fee Regulatory Committee¹⁰³ is constituted for the purpose of determination of the fee for any standard or course of study in self-financed schools. Chaired by a retired District or Sessions Judge or an IAS having retired from a post not below Principal Secretary, Engineer, CA, academician, representative from self-financed school management. DEO will act as a coordinator. Jurisdiction is a zone comprising of specified districts. The committee has power to require each self-financed school to place before the Committee the proposed fee structure with relevant documents and books of accounts for scrutiny, verify whether the fee proposed is justified and whether it

102 Gujarat Self-Financed Schools (Regulation of Fees) Act, 2017

103 The committee consists of a retired District and Sessions Judge or a retired IAS of the rank of a Principal Secretary, or a retired IPS not below the rank of Additional DGP to be nominated by the government and who shall be the Chairperson. Other members are, a Chartered Accountant, a civil engineer or a government approved valuer, a representative from the self-financed school management of the respective zone, and academician – all nominated by the government. The District Education Officer acts as a coordinator of the committee.

amounts to profiteering or charging of exorbitant fee, approve the existing fee structure or determine the fee that can be charged, verify whether the fee collected is recognised by the competent authorities, hear complaints or initiate suo moto hearings with regard to collection of excess fees, regulate the fees charged and recommend penal action as per the provisions of the act. The Committee has the powers of Civil Court for holding inquiries. It may exempt schools that charge amount of fee lower than the fee prescribed by the government. The committee has the power to require each self-financed school **to place before the Committee the proposed fee structure with relevant documents and books of accounts for scrutiny.** Upon verification, the Committee can decide if the fee proposed is justified and whether it amounts to profiteering or charging of exorbitant fee. It can approve the existing fee structure or determine the fee that can be charged. Factors determining fees leviable as determined by the Committee: Location of the school, investment incurred to set up the school, infrastructure made available to the students as mentioned in prospectus and website, expenditure on administration, maintenance of services and utilities, excess Fund generated from NRIs as charity or contribution of the government for providing freeship, student strength, classes of study and courses of study, qualification of teaching and non-teaching staff, salary components and reasonable amount of yearly salary increments, expenditure incurred on students against total income of the school including profit earned from school, reasonable revenue surplus for purpose of development, education and expansion, any other factors. Fees will be determined based on the total fees and different fees levied. **The fee structure is binding for 3 years,** the Fee revision committee may recommend upper fee limit to be kept for the schools of the state. The government shall constitute a committee for the purpose of revision against the order passed by the Fee Regulatory committee. **Penalties include refund twice the amount of fee to the parents plus Rs. 5 lakhs fine for first contravention, 5-10 lakhs for second contravention and cancellation or withdrawal of registration/affiliation/NOC on third** and subsequent

contravention on recommendation of the Fee Regulatory Committee. Amount is to be refunded in 15 days failing which one percent of total payable amount shall be levied each day. No Civil Court shall have jurisdiction to deal with or decide any question which the regulatory committee or as the case may be the revision committee is empowered to deal with or decide with by or under this Act and no injunction shall be granted by any civil court in respect to any action taken or to be taken in pursuance of any provisions of this Act. The Act also lays down obligations for self-financed schools. The school management or an authorised person is required to remain present before the Committee as and when required. The school is required to inform the Fee Regulatory Committee, (i) regarding any tie up, agreement, collaboration with any pre-primary school / play group either directly or indirectly; (ii) regarding any franchise given by the management for pre-primary school operating under functional, financial or administrative control of the same management or of relatives; (iii) expenditure incurred towards the related trust or affiliated / holding / subsidiary company having same trustees / directors / members or relatives; (iv) having tie up, agreement, understanding or franchise with pre-primary schools or playgroups.

IN JHARKHAND,¹⁰⁴ the Government can regulate the fee to be levied by the private schools. The fee shall be regulated in the following manner: **(a) Each school shall have a Fee Committee** consisting of the members described below: (i) Representative of management of the private school nominated by such management (Chair), Principal of the private school, (iii) Three teachers nominated by the management of private school, (iv) Four parents nominated by Parents Teachers Association (c) The management of the private schools shall be competent to propose the fees in such schools to the school level Committee keeping in consideration the provisions of the Act. The factors considered for determination of fee leviable by a school include: (i) The location of school, (ii) The infrastructure made available to the students for the qualitative education, (iii) The expenditure on administration and maintenance, (iv)

104 Jharkhand Education Tribunal (Amendment) Act, 2017

Qualified teaching and non-teaching staff as per the norms and their salary components, (v) Reasonable amount for yearly salary increments, (vi) Expenditure incurred on the students over total income of the school, (vii) Reasonable revenue surplus for the purpose of development of education and expansions of the school and (viii) Any other factors as may be notified. After considering all the relevant factors laid down under the Act, the fee committee can approve the fees within a period of thirty days from the date of receipt of the proposed fee structure and communicate the details of the fee so approved in writing to the Principal. Fee shall be effective for two years determined by Fee Committee. The Committee can indicate the different heads under which the fee shall be levied. **If the increase in fee decided by the committee is more than 10% over the fee of the previous year, then the matter shall be referred to the District Committee for its approval.** If the fee Committee fails to decide the fee within the period specified the management shall immediately refer the matter to the District Committee for its decision under intimation to the fee Committee. During the pendency of the reference, the management of the school shall be at liberty to collect the fee of the previous academic year. A District Committee is to be constituted to take decision in case of referred by the management or against the fee approved by the school level fee committee. The District Committee can examine the fee leviable by a private school as per factors mentioned earlier. **The decision of the District Committee is to be displayed on the notice board of the concerned school,** and if such school has its own website, it should be displayed on the same as well by the management. The order of the District Committee shall be binding on the parties to the proceedings before it for two academic years. It shall not be called in the question in any Civil Court except by the way of any appeal before the Jharkhand Education Tribunal under this Act. The penalties are (i) for the first offence, be punishable with fine which shall not be less than fifty thousand rupees but which may extend to two lakh fifty thousand rupees or twice

the amount taken in excess of the fee as determined under this Act, whichever is higher, (ii) for the second or subsequent offences, be punishable with the fine which shall not be less than one lakh rupees or twice the amount taken in excess of the fee as determined under this Act, whichever is higher. (iii) In addition to above penalties suitable action for de-recognition of the defaulting school shall be taken up and it shall be mandatory on the part of the concerned affiliating body to de-recognize such schools.

IN KARNATAKA,¹⁰⁵ the maximum tuition fee in respect of Private Unaided Educational Institutions shall be fixed taking into consideration the Salary Expenditure on teaching and non-teaching staff plus 30% of the salary expenditure towards contingency and maintenance costs divided by total number of students, provided that the salary expenditure includes contribution towards Provident Fund by the management, encashment benefit. LTC/HTC benefits, medical allowance, conveyance allowance, if any, given to the staff of the institution and provided further that the total number of students for calculation of the quantum of fees shall be the actual number of students on roll at the end of the previous academic year and the sanctioned intake in respect of approved additional sections, if any, for the ensuing year, namely the year for which the fees is being notified. It suggests a calculation of the fees using normative total expenditure (NTE) and normative net expenditure (NNE). The total tuition fee proposed shall not exceed NNE, should not be more than 15% charged in the current academic year. Schools can charge a term fee not exceeding 10% of the tuition fee and should cover all cocurricular- activities. Violation results in withdrawal of recognition.¹⁰⁶

IN MAHARASHTRA, the management of private unaided schools and permanently unaided schools shall be competent to propose the fees in such schools.¹⁰⁷ But it lays down a process of seeking revisions and appeals against the fees proposed. Collection of excess fees is

105 Karnataka Educational Institutions (Regulation of Certain fees and Donations) Rules, 1999.

106 Karnataka Educational Institutions (Regulation of certain fees and donations) Amendment Rules 2018

107 Maharashtra Educational Institutions (Regulation of Fee) Act 2011

prohibited; a PTA is to be constituted and an executive committee is also required to be formed for a duration of one year. Principal is Chair, one parent is Vice Chair, secretary is one teacher, 2 Joint Secretaries are parents and one parent and one teacher from every standard are members. The management of private unaided schools and permanently unaided schools is competent to propose the fees in such schools.

The management of the school is required to submit details of the proposed fee with relevant records to the Executive Committee for its approval at least 6 months in advance. EC can decide the amount afresh. The EC will approve fees and send to MC in 30 days and it will be displayed and binding for 2 years. If EC fails to decide, MC will refer the matter to Divisional fee regulatory committee for its decision. During the pendency, management is at liberty to collect the fee of the previous year plus 15% increase till the final decision of the Divisional fee regulatory committee. If the difference between the fees decided by the management and approved by EC is not more than 15%, then the EC fees will be binding and if the difference is more than 15%, the MC may prefer to appeal to the Divisional Fee Regulatory committee. Within 90 days, divisional committee shall decide. Divisional Committee may order refund of excess fees and can recover it from management as arrears of land revenue. If parties are aggrieved by decision of Divisional Committee, they can appeal before the Revision Committee. The Divisional Committee has a retired district judge nominated by the government in consultation with the High Court as Chair, divisional chair of Maharashtra State Board of Secondary and Higher Secondary Examinations, CA or ICWA, Retired Head of CBSE or ICSE or another board not directly connected with any educational institution or retired officer not below rank of JD of Education, regional Deputy Director of education is member secretary. The term of the Committee is for 3 years. A selection committee for the Divisional Committee will have Chair of Revision Committee, Secretary of Law and Judiciary and Secretary of Education. Following factors will be considered while determining the fees: location,

infrastructure, education standard, expenditure, excess funds, qualified staff, reasonable salary increments, expenditure incurred on the students over total income of school and reasonable surplus for qualitative development, others.

THE DIVISIONAL COMMITTEE CAN ALSO ADJUDICATE DISPUTE BETWEEN SCHOOL MANAGEMENT AND PTA REGARDING FEES CHARGED. IT HAS POWERS OF INQUIRY OF CIVIL COURT.

The fees once pronounced are binding for 2 years. Revision Committee has retired HC Judge (Chair) nominated by the government in consultation with the HC, any retired person holding the post of Director of Education or equivalent post or retired Head of CBSE or ICSE or other boards, CA or ICWA, Jt director of Education is the member secretary. The penalties stipulated are for the first offence – Rs 1 lakh to 5 lakh or twice the amount taken in excess of the fee; for the second offence, Rs 2 lakh to 10 lakh or twice the excess fee charged whichever is higher or imprisonment for 3-6 months. Persons repeatedly contravening cannot hold official post in any school. If management is responsible, it can compound the first offence. A reading of the provision related to cognizance indicates a contradiction and it is not clear if the offences are cognizable or not. **The Rajasthan Schools (Regulation of Fee) Act 2016 is similar to the Maharashtra legislation.**

IN MADHYA PRADESH,¹⁰⁸ the factors that decide increment in fees include cost of the land, building and fixtures, number of students, streams of study, expenditure incurred on infrastructure and facilities, expenses on administration and maintenance, expenses on education of children from economically weaker sections and disadvantaged groups, economically

108 Madhya Pradesh Niji Vidyalaya (Fees Tatha Sambandhit Vishayon ka Viniyaman) Vidheyak, 2017

weaker students and disadvantaged students, number of teaching and non-teaching staff, assistance provided by the govt such as land, grants, student teacher ratio any other factor. The process is as follows. **Within 90 days of commencement, all private schools are required to submit audited accounts for preceding 3 years.** The District Committee for Regulating Fees may inspect schools whose excess of annual receipts over expenditure is less than 19%. The District Committee shall not fix the fee but shall regulate the increment in fee. It would be regulated to keep excess of annual receipts of the year for which the fee is proposed over expenditure for the same year within 15% of such annual receipts. **Management can increase upto 10%. District Committee is authorized to decide quantum of increment of fee where it is more than 10% of that charged preceding year. If more than 15%, district com will send it to state committee for regulating fee.** State committee is authorized to decide the quantum of increment of fee where the proposed increment is more than 15 % of preceding year.

The District committee comprises district collector (chair), district treasury officer, an officer not below the level of assistant director and DEO is Member secretary. It can enquire into complaints made by parents or guardians or students regarding violation, can take suo moto action, has inquiry powers of civil court, and ask for refund twice the amount paid by the student, plus Rs. 2 lakhs for first contravention, Rs 4 lakhs for second contravention and Rs 6 Lakhs for subsequent contravention. It may also recommend suspension or cancellation of recognition. If the school fails to refund, District committee can recover monies as arrear of land revenue. The State committee comprises Commissioner for Public Instruction (chair), additional mission director state education centre, joint director (finance) of public instruction, chief engineer, state education centre and director of public instruction is member secretary.

IN PUDUCHERRY,¹⁰⁹ fees and other charges in private schools shall be as fixed by the committee constituted

for the purpose of regulating the fee to be collected in private schools. The Government shall constitute a fee committee to recommend a reasonable school fee structure to the aided and unaided private schools in the Union Territory of Puducherry. The committee shall comprise the following officials and non-officials to study the existing fee structure, in the private aided and unaided schools and recommend appropriate fee and other charges to be collected by each of the private schools: A Retired High Court Judge / Retired I.A.S. Officer nominated by the Government, (Chair), Director of School Education Member-Secretary, Chief Engineer (Buildings)/ Public Works Department, Deputy Secretary / Under Secretary (Education), Joint Director of School Education, Deputy Director of Elementary Education, Senior Accounts Officer, Directorate of School Education, Chartered Accountant nominated by the Government and three representatives of Private School Managements as members.

The factors for determination of fee include (a) The locality of the private school, namely, urban/ rural area, more specifically, taking into consideration, the taluk, revenue village, hamlet wherein the school is situated: Students strength of the school; Classes of study and total number of classes in the school; (d) The available infrastructure, namely, status of the school, as indicated below:(1) Schools having minimum infrastructure facilities as prescribed by the Government from time to time' (2) Schools having infrastructure facilities more than that prescribed:(i) Schools having more than the minimum requirement of laboratory more number of library books, classroom facilities and other sanitary and drinking water facilities. (ii) Schools having more than adequate classroom facilities, laboratory facilities, library area, number of books, very good sanitation facilities, highly protected drinking water facilities and other sanitary facilities together with high percentage of results. (iii) Schools fully equipped with modern facilities like equipment for conducting smart classes, provision of air-conditioner, etc. the recurring and non-recurring nature of expenditure on

109 Puducherry School Education (Amendment) Rules, 2014

administration and maintenance, including payment of salaries, etc.; the reasonable surplus required for the growth and development of the Private school; teacher-pupil ratio; and any other factors as may be prescribed by the committee. The committee shall, on determining the fee leviable by a private school, communicate its decision to the school concerned.

THE POWERS AND FUNCTIONS OF THE COMMITTEE SHALL BE (A) TO DETERMINE THE FEE TO BE COLLECTED BY PRIVATE SCHOOLS; (B) TO HEAR COMPLAINTS WITH REGARD TO THE COLLECTION OF FEES IN EXCESS OF THE FEE DETERMINED BY THE COMMITTEE.

If the committee, after obtaining the evidence and explanation from the management of the private school concerned comes to the conclusion that the private school has collected fee in excess of the fee determined by the committee, it shall recommend to the appropriate authority for the withdrawal or cancellation of the recognition or approval, as the case may be, of the private school or for any other course of action as it deems fit in respect of the private school concerned. (2) The committee shall have the power to (a) require each private school to place before the committee the proposed fee structure of such school with all relevant documents and books of accounts for scrutiny within such date as may be specified by the committee; (b) verify whether the fee proposed by the private school is justified and it does not amount to profiteering or charging of exorbitant fee; (c) approve the fee structure or determine some other fee which can be charged by the private school. (3) The committee shall have the power to, (a) verify whether the fee collected by the

private school affiliated to the respective State Boards of School Education, the Central Board of Secondary Education, Indian Council for Secondary Education or any other affiliating body commensurate with the facilities provided by the school; (b) to hear complaints with regard to collection of excess fee by a private school affiliated to the Central Board of Secondary Education, ICSE or any other affiliating body; and (c) to recommend to the Central Board of Secondary Education, ICSE or any other affiliating body, as the case may be, for disaffiliation of the private school, if it comes to a conclusion that the school has collected excess fee, in violation of the fee structure prescribed by the committee. (d) to recommend to the appropriate authority to withdraw permanently or for any specified period the recognition of any private school, under section 13 (l) of the Act.

IN TAMIL NADU,¹¹⁰ the government has the authority to fix the fee for admission of pupils to any Standard or course of study in Government schools and aided schools. The **Government can constitute a committee for the purpose of determination of the fee for admission to any Standard or course of study in private schools.** (2) The committee shall consist of the following members, namely: — (a) a retired High Court Judge, nominated by the Government. - Chairperson; (b) Director of School Education. - Ex-officio Member; (c) Director of Matriculation Schools. - Ex-officio Member; (d) Director of Elementary Education. - Ex-officio Member; (e) Joint Chief Engineer (Buildings) Public Works Department. - Ex-officio Member; (f) Additional Secretary to Government, School Education Department. - Ex-officio Member-Secretary. The term of office of the Chairperson shall be for a period of three years. The committee shall determine the fee leviable by a private school taking into account the following factors, namely:— (a) the location of the private school; (b) the available infrastructure; (c) the expenditure on administration and maintenance; (d) the reasonable surplus required for the growth and development of the private school; (e) any other factors as may be prescribed. (2) The committee shall, on determining the fee leviable by a private school, communicate its

110 Tamil Nadu Schools (Regulation of Collection of Fee) Act 2009

decision to the school concerned. (3) Any private school aggrieved over the decision of the committee shall file their objection before the committee within fifteen days from the date of receipt of the decision of the committee. (4) The committee shall consider the objection of the private school and pass orders within thirty days from the date of receipt of such objection. (5) The orders passed by the committee shall be final and binding on the private school for three academic years. At the end of the said period, the private school would be at liberty to apply for revision. (6) The committee shall indicate the different heads under which the fee shall be levied.

The committee has the power and functions (a) to determine the fee to be collected by private schools; (b) to hear complaints with regard to collection of fees in excess of the fee determined by it or fixed by the Government, as the case may be. If the committee, after obtaining the evidence and explanation from the management of the private school or aided school concerned or from the Government school, comes to the conclusion that the private school or the Government school or aided school has collected fee in excess of the fee determined by the committee or fixed by the Government, as the case may be, **it shall recommend to the appropriate competent authority for the cancellation of the recognition or approval, as the case may be**, of the private school or aided school or for any other course of action as it deems fit in respect of the private school or Government school or aided school. The committee also has power to (i) require each private school to place before the committee the proposed fee structure of such school with all relevant documents and books of accounts for scrutiny within such date as may be specified by the committee; (ii) verify whether the fee proposed by the private school is justified and it does not amount to profiteering or charging of exorbitant fee; (iii) approve the fee structure or determine some other fee which can be charged by the private school. The Committee is also authorized to (i) verify whether the fee collected by the School affiliated to the Central Board of Secondary Education

commensurate with the facilities provided by the school; (ii) to hear complaints with regard to collection of excess fee by a school affiliated to the Central Board of Secondary Education; and (iii) to recommend to the Central Board of Secondary Education for disaffiliation of the school, if it comes to a conclusion that the school has collected excess fee.

In addition, there is a District Committee in every revenue district, which comprises the Chief Educational Officer of the district as Chairperson. The District Committee or any of its member at any time, during the normal working hours of any private school, enter such private school or any premises thereof or any premises belonging to the management of such private school if it or he has reason to believe that there is or has been any contravention of the provisions of this Act or the rules made thereunder and search and inspect any record, accounts, register or other document belonging to such private school or of the management, in so far as any such record, accounts, register or other document relates to such private school and seize any such record, accounts, register or other document for the purpose of ascertaining whether there is or has been any such contravention.

IN UTTAR PRADESH,¹¹¹ “a recognized school may revise its fee annually for its existing students by itself for each grade/class/level of school equivalent to average percentage per capita increase of monthly salary of teaching staff of previous year, but the fee increase shall not exceed latest available yearly percentage increase in consumer price index + five percent of the fee realized from the student” (Section 4). Thus, different states have different ways of defining what a legitimate fee hike is, how is it to be calculated, who comes up with the figure, who approves and who adjudicates on appeals for revision. In Arunachal Pradesh, the private aided and unaided school shall judiciously determine the school fee commensurate with facilities. The fee charged against various heads such as registration, tuition, admission, examination, civic amenities, games and sports, publication, library, laboratory, computer,

111 Uttar Pradesh Self-financed Independent Schools (Fee Regulation) Act 2018

function/celebration, practical, project work, etc. or by whatever name called shall be audited annually. A copy of the same shall be endorsed to the Director of School Education.¹¹²

The foregoing description shows that the number of states have the fee regulation legislation and have different ways of controlling and determining what private schools can charge as fees and what is reasonable taking into consideration similar factors.

TABLE 4. FEE REGULATION

PROVISIONS	A P	A R	A S	B R	C H	C G	D L	G A	G J	H R	H P	J K	J H	K A	K L	M P	M H	M N	M L	M Z	N L	O D	P B	R J	S K	T N	T S	T R	U P	U K	W B	
Prohibition of capitation fees and compulsory fees (as additional provided under state legislation)																																
Fee hike permitted every year																																
Process prescribed for regulating the fee hike																																
Prescribed distribution of how fees should be utilized																																
Fees not to be collected in cash or kind																																

112 Arunachal Pradesh Education Rules 2010

ADMISSION PROCESS

WHAT SOME STATES REGULATE

- Fixed window for the admission cycle and academic sessions in private schools
- No discrimination in admission
- Reservations in private schools under Section 12(1)(c) of the RTE Act and contractual obligations based on allotment of subsidized land including the number of seats and the procedure of filling seats
- No screening and ensuring transparency in admission

State regulations also provide a **fixed window for the admission cycle and academic sessions in private schools**. Additionally, as per the RTE Act, schools are required to keep their admission open at all times, in case a child who had not been admitted to a school or had discontinued schooling needs to be admitted to a class appropriate to her/his age, in keeping with the RTE Act. There are a few additional admission related provisions in states.

In **Bihar** admission in the school affiliated to the Board shall be made without any distinction of religion, caste and creed. Admission of SC/ST/OBC students shall be governed by the prevailing reservation laws of the State Government for the time being in force.¹¹³ In Delhi - The head of every recognised unaided school shall regulate admissions to a recognised unaided school or to any class thereof either on the basis of admission test or on the basis of result in a particular class or school.¹¹⁴ At the pre-primary classes, there is to be no Management Quota in admission in any private unaided recognised school of Delhi. 25% seats for EWS and DA as defined under RTE Act, 5% seats for staff quota and 5% girl's quota for co-ed schools. Open seats criteria is based on fixed parameters and points. Neighbourhood up to 6 km 70 points, sibling studying in school 20, parent alumni of school 5, inter-

state transfer case 5 points. Schools are not allowed to fix additional points other than those specified.¹¹⁵

In terms of social inclusion and equity, the provisions are primarily related to Section 12(1)(c) of the RTE Act and similar contractual obligations in lieu of allotment of land at concessional rates. IN ASSAM 5% of seats are reserved for meritorious pupils from poor families as recommended by Director.¹¹⁶ **IN CHANDIGARH**, schools have to reserve 15% seats for children belonging to economically weaker sections and fee charged from those students shall be nominal preferably the same as is charged from students of a government school. If school is not able to fill these seats same should be brought to the notice of the Chandigarh Administration.¹¹⁷

IN DELHI, schools, including minority, where were allotted land by **the government shall also admit children from Economically Weaker Sections in the neighbourhood to the extent of 25% in all fresh admissions** made in other classes above the entry level. Those minority schools which have been allotted land by the government agencies at concessional rates, shall admit children belonging to EWS category under free seats to the extent of 20%¹¹⁸ and shall get reimbursed at par with students of the government schools for expenditure on

113 Bihar School Examination Board Affiliation Bye-laws 2011

114 The Delhi Education Rules 1973

115 The Recognised Schools (Admission Procedure for Pre-primary classes (Amendment) Order 2013 – Directions passed by the HC vide order dated 25/09/2013 in WPC No 2463/2013 titled Social Jurist A civil rights group v Lt Governor of NCT of Delhi and Anr.

116 Assam Non-government Educational Institutions (Regulation and Management) Act 2006

117 Chandigarh Allotment of Land to Educational Institutions (Schools), Etc. on Lease-hold Basis in Chandigarh Scheme, 1996

118 Notification no F.DE/15/Act/2006/424 dated 25-01-2007

account of uniform and books.¹¹⁹ Delhi also prescribes a manner of admission against free seats which includes display of total seats, and free seats at entry level, date of submission of applications, date of display of eligible candidates for draw, date of draw, date of display of waiting list, date of deposition of fees, last date of admission. No registration fee including charges of prospectus can be charged from parents applying against a free seat. Common Admission Form is provided free of cost to parents and would be available online. The draw of lots happens in presence of parents and a nominee of education department. Proceedings are video graphed and sent to Deputy Directors along with list of successful candidates on the same day or next day. Each application is acknowledged and assigned a registration number. If any application is not in order and rejected, reasons are recorded and communicated. If there are vacant seats, it would be re-notified for inviting further applications. No screening procedure is conducted. Documents required are income certificate which is to be renewed every year. District Admission Monitoring Committee is constituted to hear grievances. Private schools are not reimbursed if the school is already under an obligation to provide free education on account of receiving any land, building,

equipment or other facilities either free of cost or at a concessional rate.¹²⁰

IN GOA, no child shall be denied admission to any school on any ground including that the name of the father is not available, the absence of relevant documentation, child is suffering from HIV or AIDS, belongs to marginalized communities, suffers from any illness or is differently abled.¹²¹ In Haryana, the recognized private schools are required to reserve ten percent seats for meritorious students belonging to Economically Weaker Section (EWS) and Below Poverty Line (BPL) categories. The school shall charge fee from these students at the same rate as charged in Government Schools.¹²² In Sikkim, all private educational institutions are required to reserve at least 20% of its total seat to be filled up by local students whose parents possess Sikkim subject' Certificate/ Certificate of Identification.

The procedure for filling these seats is prescribed. In the event of sufficient number of local students not being found in any academic session it may be filled up by the Institution from amongst any other category of students by adopting a transparent procedure.¹²³

TABLE 5. ADMISSION REQUIREMENTS

PROVISIONS	A P	A R	A S	B R	C H	C G	D L	G A	G J	H R	H P	J K	J H	K A	K L	M P	M H	M N	M L	M Z	N L	O D	P B	R J	S K	T N	T S	T R	U P	U K	W B	
No reimbursement to those with land obligations																																
No segregation or discrimination																																
Additional quota																																

119 In view of Delhi High Court order dated 24-09-2012 and 04-12-2012 in WP (J) No 6439/2011 in the matter of Mahipal Sawaria v Director (Education and WP © No 3715/2011 in the matter of Ashok Kumar Thakur GNCTD & Ors. Cited in Delhi School Education (Free seats for Students belonging to Economically Weaker Sections and Disadvantage Group) Amendment Order 2013

120 Delhi School Education (Free seats for Students from Economically Weaker Sections and Disadvantaged Groups) Order 2011

121 Goa Children's Act, 2003

122 Haryana School Education (Third Amendment) Rules, 2013

123 Sikkim Reservation of Seats in Private Educational Institution Act 2008

PARENT PARTICIPATION

WHAT SOME STATES REGULATE

- Existence of a PTA and its constitution
- Modalities for its formation
- Its responsibilities

The provisions with regards to parent participation are relatively fewer in state legislation and norms. In Andhra Pradesh, there is a requirement to have a PTA for every school.¹²⁴ Every school, whether aided or unaided is required to constitute a Governing Body consisting of (i) President of the educational agency; (ii) Secretary/Correspondent/Manager of the educational agency; (iii) Head master/Principal of the school; (iv) One representative of teaching staff to be chosen from among themselves; (v) President of the Parent-teachers' Association;¹²⁵ (vi) An educated mother from among the parents to be nominated by the District Educational Officer.¹²⁶ **In Bihar, the unaided schools are required to consult parents through parents representative before revising the fees.**¹²⁷

IN KARNATAKA, Parent Teacher Committee is required to be constituted by every recognised educational institution within thirty days of the commencement of each academic year.¹²⁸ The procedure for selection of parent is also provided. 1) Parents of the students of the concerned Private Educational Institution may register their names in such Institution. Such registered parents are eligible for being selected as representatives of parents in the Managing Committee of such Institution.

(2) A person nominated by the Governing Council of the Private Educational Institution shall announce the list of registered parents after duly obtaining the same from the Head of the Private Educational Institution before the constitution of the Managing Committee under section 42. He shall not act as the Returning Officer in the said selection. Under no circumstances, the staff members of the Private Educational Institution shall be nominated to act as the Returning Officer. (3) The Returning Officer appointed by the Governing Council shall call upon the parents so registered to select amongst themselves two persons to represent them on the Managing Committee.¹²⁹

IN TAMIL NADU, EVERY PRIVATE SCHOOL IS REQUIRED TO CONSTITUTE A PARENT-TEACHER ASSOCIATION.

It should be constituted in such manner and to perform such functions as may be prescribed, to encourage participation of the parents in improving the quality of education and learning environment.¹³⁰

¹²⁴ Andhra Pradesh Education Act, 1982 with amendments in 1987

¹²⁵ Constituted under the provisions of 60Ms.No.246, Education, dated the 17th February, 1987

¹²⁶ Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration and Control of Schools) Rules 1994

¹²⁷ Bihar School Examination Board Affiliation Bye-laws 2011

¹²⁸ Karnataka Educational Institutions (Classification, Regulation and Prescription of Curricula etc.) Rules, 1995

¹²⁹ Karnataka Educational Institutions (Selection of Parent Members to the Managing Committee) Rules, 2001

¹³⁰ Tamil Nadu Private Schools (Regulation) Act 2018

TABLE 6. ROLE OF PARENTS

PROVISIONS	A P	A R	A S	B R	C H	C G	D L	G A	G J	H R	H P	J K	J H	K A	K L	M P	M H	M N	M L	M Z	N L	O D	P B	R J	S K	T N	T S	T R	U P	U K	W B	
Schools to have PTA																																
Membership																																
Role in fee regulation																																

TEACHER QUALIFICATIONS AND SALARIES

WHAT SOME STATES REGULATE

- Modalities of management of schools- appointment of manager, managing committee, advisory/ governing board of the school.
- Teaching and non-teaching staff to have prescribed qualifications
- Modalities of appointment, dismissal, removal of teachers. Payment of social protection and labour rights of teachers; parity in pay of government and private sector teachers
- Reservations for teachers from marginalized communities
- Modalities of addressing disputes between management and teachers/non-teaching staff and processes for dismissal of staff

Although **teacher qualifications are provided for under the RTE Act and the National Council for Teacher Education notifications, state governments have required that private schools hire teachers with the prescribed qualifications.** These norms are almost uniform across the states. However, there is variation in terms of salaries and service conditions of teachers provided under state regulations.

All teaching and non-teaching staff are required to have desired qualifications and be appointed through a

procedure prescribed by the government. The RTE Act provides for minimum academic qualifications and an eligibility exam as essential conditions for appointing a teacher. However, States impose some additional requirements. For instance, the recruitment of teachers is regulated by the presence of a government official in the selection panel in **HARYANA**, and staff appointment patterns are prescribed by the government in **KARNATAKA**. Haryana and Karnataka also regulate the minimum salary that private schools must pay their teachers, unlike other States in the survey.¹³¹

131 Ambast, Shruti; Gaur, Ankita; Sangai, Ajey (2017). Regulation of Private Schools in India. New Delhi: Vidhi Centre for Legal Policy

IN ANDHRA PRADESH, no teacher or member of non-teaching staff in any private institution can be dismissed, removed or reduced in rank except after due process. No employee should be suspended except when an inquiry into a gross misconduct is contemplated, not more than two months. Suspended employees are to be paid subsistence allowance. Appeals against the suspension order can be made to the competent authority who will not interfere unless the order is biased, perverse, not followed due process.¹³² All appointments made either teaching or non-teaching staff by aided or un-aided institutions are subject to the approval of the competent authority. **Schools are required to adopt Teachers Provident Fund Scheme or any other Scheme meant for the benefit of its employees.** The staff appointed in unaided private schools and those appointed in the unaided private schools and those appointed in the unaided posts of the higher classes of the upgraded school are to be paid salaries as prescribed by the governing body. Approximately 50% of the total revenue collection as fee from student is to be earmarked for payment of regular salaries to the staff 15% of the revenue shall be earmarked for providing various benefits like Teacher's Provident fund, Group Insurance etc.¹³³ This is a unique provision, tying student fees with teacher salaries, also seen in **KARNATAKA**.

IN ARUNACHAL PRADESH, NO PERSON WHO DOES NOT POSSESS THE REQUISITE QUALIFICATIONS PRESCRIBED CAN BE APPOINTED, AS AN EMPLOYEE IN A RECOGNIZED PRIVATE EDUCATIONAL INSTITUTION.

The pay and allowances of persons employed in the recognized private institutions is to be paid on or before such day in every month.¹³⁴ **IN CHANDIGARH**, schools are required to appoint qualified teachers and staff and pay them salaries as is required to be paid in an aided school in the UT of Chandigarh.¹³⁵

IN DELHI, the Administrator may make rules regulating the minimum qualifications for recruitment. The recruitment of employees is made on the recommendation of a Selection Committee consisting of an educationist and a representative of the Director. Any employee of a recognised private school who is dismissed, removed or reduced in rank may, within three months from the date of communication to him of the order of such dismissal, removal or reduction in rank, appeal against such order to the Education Tribunal. The managing committee of a recognised private school has to communicate its intention to suspend any of its employees to the Director and no such-suspension can be made without prior approval of the Director. The scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees of a recognised private school shall not be less than those of the employees of the corresponding status in school run by the appropriate authority. Where the scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees of any recognised private school are less than those of the employees of the corresponding status in the schools run by the appropriate authority, the appropriate authority shall direct, in writing, the managing committee of such schools bring the same up to the level of those of the employees of the corresponding status in schools run by the appropriate authority. Failure to comply with such direction can be deemed to be non-compliance with the conditions for continuing recognition of an existing school and the provisions of section 4 shall apply accordingly.¹³⁶ The Shailaja Chandra

¹³² Andhra Pradesh Education Act, 1982 with amendments in 1987

¹³³ Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration and Control of Schools) Rules 1994

¹³⁴ Arunachal Pradesh Education Act 2010

¹³⁵ Chandigarh Allotment of Land to Educational Institutions (Schools), Etc. on Lease-hold Basis in Chandigarh Scheme, 1996

¹³⁶ The Delhi School Education Act, 1973

Review committee observed that the expectation that all schools can uniformly pay government scales to the teachers is being unrealistic and recommends that the teachers' salaries should have some relationship to the school fees in the case of smaller schools. It recommended that a bench mark could be that 50% of the fee collection would have to go towards teachers' salaries and 40% teachers may be allowed to be taken on contract basis except for core subjects. It cited the case of Maharashtra and Kerala, where the employees in the CBSE/ICSE school are required to 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. 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.¹³⁷ The minimum and maximum of age limit for recruitment to a recognised private school, whether aided or not, shall be the limits specified by the Administrator for appointment to corresponding posts in Government schools. Leave is regulated, grounds for suspension are provided.¹³⁸

IN DELHI, the 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 vs. Director of Education*¹³⁹ and *Kathuria Public School vs. Director of Education*¹⁴⁰ 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.

IN GUJARAT, there is 15% reservation of vacancies of teaching staff for SC/ST. Every registered private secondary school is supposed to have a school staff selection committee and a special school committee for recruiting the HM. Ratification of the Board is required for suspending or reducing rank. Tribunals are instituted to hear cases of dispute between school management and teaching and nonteaching staff.¹⁴¹

IN HARYANA, the proposed salary of the staff is notified and it cannot be less than minimum wage policy of the state, that is notified by Labour Department for the classes covered under minimum Wages Act, and for teaching staff any minimum salary standards specified by Education Department/ Deputy Commissioner.¹⁴² Similarly, Himachal Pradesh also specifies Minimum wages to be paid to skilled and unskilled staff.¹⁴³

In **KARNATAKA**, the maximum tuition fee in respect of Private Unaided Educational Institutions is fixed taking into consideration the Salary Expenditure on teaching and non-teaching staff plus 30% of the salary expenditure towards contingency and maintenance costs divided by total number of students. Provided that the salary expenditure includes contribution towards Provident Fund by the management, encashment benefit. LTC/HTC benefits, medical allowance, conveyance allowance, if any, given to the staff of the institution and that the total number of students for calculation of the quantum of fees shall be the actual number of students on roll at the end of the previous academic year and the sanctioned intake in respect of approved additional sections, if any, for the ensuing year, namely the year for which the fees is being notified.

137 Cited in Report of the review committee on the Delhi School Education Act and Rules, 1973 (Shailaja Chandra report).

138 The Delhi School Education Rules 1973

139 123(2005)DLT89; 2005(83)DRJ541 dated 22 July 2005

140 113 (2004) DLT 703 dated 28 May 2004

141 Gujarat Secondary Education Act 1972

142 Haryana School Education (Amendment) Rules, 2007

143 Himachal Pradesh Board of School Education Affiliation Regulations/Byelaws,1992 (Amended February,1995, November, 2006 & in August,2013)

These fees shall be collected by the management in addition to the Special Development Fees and Term Fees stipulated in the Karnataka Educational Institutions (Classification, Regulation and Prescription of Curricula) Rules 1995. The salary expenditure shall be as per the audited account of the management subject to the limitation of pay scales prescribed by Government as well as the prescribed staffing pattern and it has to be cross verified with reference to Acquittance Roll, Bank Account of the employee and Attendance Register.¹⁴⁴

IN MAHARASHTRA, the State Government may make rules providing for the minimum qualifications for recruitment

(including its procedure), duties, pay, allowances, post-retirement and other benefits, and other conditions of service of employees of private schools and for reservation of adequate number of posts for members of the backward classes, provided that, neither the pay nor the rights in respect of leave of absence, age of retirement and post-retirement benefits and other monetary benefits of an employee in the employment of an existing private school. No employee of a private school can be suspended, dismissed or removed or his services shall not be otherwise terminated or he shall not be reduced in rank by the Management, except in accordance.¹⁴⁵

TABLE 7. HUMAN RESOURCES

PROVISIONS	A P	A R	A S	B R	C H	C G	D L	G A	G J	H R	H P	J K	J H	K A	K L	M P	M H	M N	M L	M Z	N L	O D	P B	R J	S K	T N	T S	T R	U P	U K	W B	
Appointment of Administrator or Manager																																
Duties of manager																																
Removal of Administrator or Manager																																
Teacher: pupil ratio																																
Teacher appointment																																
Teacher qualifications																																
Teacher salary																																
Teacher dismissal, removal or reduction in rank or suspension procedure																																
Teacher code of conduct																																
Non-teaching Staff appointment																																
Non-teaching staff code of conduct																																

¹⁴⁴ Karnataka Educational Institutions (Regulation of Certain fees and Donations) Rules, 1999.

¹⁴⁵ Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act 1977

PROVISIONS	A P	A R	A S	B R	C H	C G	D L	G A	G J	H R	H P	J K	J H	K A	K L	M P	M H	M N	M L	M Z	N L	O D	P B	R J	S K	T N	T S	T R	U P	U K	W B	
Non-teaching staff salary																																
Non-teaching Staff dismissal, removal or reduction in rank or suspension procedure																																
Appeal to the government for dismissal, removal, reduction in rank or suspension																																
Advisory Body																																
Governing board																																
Managing committee																																

TAMIL NADU has a unique provision and it requires that every private school shall also deploy its staff for carrying out the work of census or election or any survey, if required.¹⁴⁶ As per the CISCE Rules for affiliation, the schools in India must appoint, and pay salaries and

other admissible allowances to the staff at par with the corresponding categories of employees in the State Government schools or as per conditions prescribed by the Government of India or as per the conditions laid down by the State Government in the NOC.

TABLE 8. QUALITY OF EDUCATION

PROVISIONS	A P	A R	A S	B R	C H	C G	D L	G A	G J	H R	H P	J K	J H	K A	K L	M P	M H	M N	M L	M Z	N L	O D	P B	R J	S K	T N	T S	T R	U P	U K	W B	
Curriculum requirements																																
Inspection																																
Use prescribed syllabi, textbooks, handbooks																																
Code of discipline for students																																

¹⁴⁶ Tamil Nadu Private Schools (Regulation) Act 2018

CHILD PROTECTION

WHAT SOME STATES REGULATE

- Ban on corporal punishment and mental harassment
- Non segregation by social identity
- Modalities for addressing complaints
- Availability of counselors
- Compulsory training of teachers on child rights, gender justice
- Existence of elected student councils
- Existence of a student protection plan

While the **RTE Act itself guarantees prohibition of physical punishment and mental harassment**, state legislation on regulation have relatively fewer provisions specifically related to child protection. **IN ARUNACHAL PRADESH**, the norms endeavour to regulate education of the pupils by the teachers wherein (i) the pupils are handled not by coercion but by persuasion so that their tender age is not abused; (ii) the pupils are taught in a friendly, conducive, cordial, hygienic and congenial atmosphere by adhering strictly to the medium of instruction in precise, lucid, understandable and simple language; (iii) the pupils are not scolded, punished, slapped or beaten up; (iv) the pupils are not segregated on the ground of caste, sex, region, religion, community or grounds in like manners.¹⁴⁷

IN GOA, all schools shall have a trained counsellor. The state shall provide assistance to all schools to achieve this. 48 hours compulsory instruction every year is to be provided on child rights and gender justice. All schools shall have elected student councils, for students above grade 8.¹⁴⁸

KARNATAKA has a Student Achievement Tracking System which is an IT system established by the state government for tracking enrolment and learning achievements of students and for managing school processes. In addition, Karnataka has provisions to maintain safety and security of students. **Every governing council is required to prepare student protection plan**, carry out safety needs assessment through annual hazard hunt exercise, prepare disaster management plan, take measures to ensure safety and security of students including protection from sexual offences, taking measures for strengthening institutional commitment to safe learning environment for students, planning for safety, capacity building and monitoring school safety. School safety measures are provided in a checklist.¹⁴⁹

IN TAMIL NADU, every educational agency is required to take all possible measures to ensure the safety and security of the pupil including protection from mental harassment or physical injury or sexual abuse.¹⁵⁰

147 Arunachal Pradesh Education Act 2010

148 Goa Children's Act, 2003

149 Karnataka Education Institutions (Classification, Regulation and Prescription of Curricula etc) Amendment Rules 2018

150 Tamil Nadu Private Schools (Regulation) Act 2018

In the context of pre-primary education, the Jharkhand High Court took suo motu notice of regulation of playschools and passed orders requiring adherence to child protection legislation. In Court On Its Own Motion vs The State Of Jharkhand & Others,¹⁵¹ the Court on the basis of the newspaper report published in the daily newspaper 'Prabhat Khabar' dated 28.08.2015, took up the matter relating to regulation of play schools in the State of Jharkhand in larger public interest as it related to the future of thousands of children being admitted in play schools in the city of Ranchi, many of which were reportedly running in basement with little

hygiene, infrastructure or desired teaching faculty. During the proceedings of this case, Government of Jharkhand framed the Jharkhand State Play Schools (Recognition and Control) Rules, 2017. In case of play schools, an affidavit that all the office bearers of the applicant organisation have never been convicted under POCSO Act, 2012; Juvenile Justice Act, 2015; and Child Labour (Prohibition and Regulation) Act, 1986 and Child Labour (Prohibition and Regulation) Amendment Act, 2016 is required from such schools.¹⁵² However, similar affidavits are not required of managements of primary and secondary schools.

TABLE 9. PROTECTION OF CHILD RIGHTS

PROVISIONS	A P	A R	A S	B R	C H	C G	D L	G A	G J	H R	H P	J K	J H	K A	K L	M P	M H	M N	M L	M Z	N L	O D	P B	R J	S K	T N	T S	T R	U P	U K	W B	
Forum to lodge complaints																																
Ban on corporal punishment																																
Student protection plan																																

COACHING INSTITUTES

WHAT SOME STATES REGULATE

- Definition of a coaching/ tuition institution
- Minimum infrastructure, safety and hygiene requirements of the centres and qualifications of teachers and tuition fees
- Penalties for non-compliance or running a coaching centre without recognition
- Mandatory registration and intimating government of closure
- Disclosure of the information about the centres to the government and citizens and submission of regular reports to the government

¹⁵¹ W.P. (PIL) No. 3929 of 2015 dated 5 February, 2018, Jharkhand High Court

¹⁵² Jharkhand State Play Schools (Recognition and Control) Rules, 2017

Another area where there are differences in regulation is that of Tutorials and Coaching. Among the states where the differences stand out, it is the definitional disparity which is significant. **The Andhra Pradesh Education Act, 1982** with amendments in 1987 states that **a tutorial institution means an institution giving coaching or instruction to 50+ candidates** or employing 5+ teachers to prepare them to appear for an examination. The **Arunachal Education Act 2010** defines a “tutorial institution” as a registered institution established or run by not less than two persons for systematically imparting education or instruction to not more than twenty-five pupils at a batch in any subject with a view to prepare them to appear for any competitive examination. The **Bihar Coaching Institute (Control and Regulation) Act 2010** defines “coaching institute” as an institute that helps in the preparation for competitive exams or academic support for more than 10 students. **In Goa, coaching class means a class conducted by any person for coaching more than five students at a time**, by charging fees in a subject but shall not include the regular classes conducted by the educational institutions recognized by the Government or, as the case may be, university.¹⁵³ In short, there are differences in the way coaching institutes are defined.

ANDHRA PRADESH requires tutorial institutions to be have sanitary conditions of premises, ensure qualifications of teaching staff, submit their annual report to the state government and seek permission in advance in case of closure.¹⁵⁴

IN ARUNACHAL PRADESH, tutorial institutions are required to comply with the minimum requirements prescribed in regard to the well-equipped class room, prescribed number of the students, adequate infrastructure, sanitary condition of the premises and the qualifications of the teaching staff. Tutorial institutions should also submit annual reports and intimate if closure.¹⁵⁵ Such institutions are required to submit a self-declaration

cum application form for registration with details such as name and address, year of foundation, nature of management, income and expenditure for last 3 years, nature of course and syllabus for coaching, system of assessment/evaluation, infrastructure facilities, safety measures, sanitation, detail of academic staff, qualification, pay and facilities, detail of Teaching Learning Material and Teaching Learning Equipment, fee structure, intake capacity etc.¹⁵⁶ **BIHAR** requires submission of curriculum, academic qualifications of teachers, tuition fees structure, details of physical infrastructure, other facilities water, sanitation, parking, lighting for purpose of registration.¹⁵⁷

GOA has elaborate provisions related to coaching classes. **In case of a coaching class having branches, each branch shall be treated as a separate coaching class.** Documents to be accompanied with the application for registration include an undertaking by the proprietor that:— (i) to the best of his knowledge and belief the tutors are not the employees of any Government run or Government funded educational institution recognised by the Government or, as the case may be, university; (ii) he shall use only the words “registered coaching class” and shall not use the words “recognised” or “approved”, on any sign board or in any advertisement or correspondence or communication of whatever nature or at any place; (iii) the necessary information regarding the time table of the coaching class, the fees charged and general information, regarding the coaching class shall be displayed on the notice board at the prominent place in the premises of the coaching class; (iv) the premises of the coaching class are not situated in the campus of any educational institution recognised by the Government or, as the case may be, university; (v) he or the chief of the coaching class, if any or any tutor or any employee of the coaching class has not been convicted for any offence involving moral turpitude and that any change in the employment of a tutor shall immediately be intimated to the competent

153 Goa Coaching Classes (Regulation) Act, 2001

154 Andhra Pradesh Education Act, 1982 with amendments in 1987

155 Arunachal Pradesh Education Act 2010

156 Arunachal Pradesh Education Rules 2010

157 Bihar Coaching Institute (Control & Regulation) Act 2010

authority; (vi) he shall abide by the condition regarding the prescribed number of students to be admitted in the coaching class; (vii) the prospectus, notes and other material shall be supplied by the coaching class without any separate fees therefor; (viii) the working hours of the coaching class shall be arranged in such a way that the same shall not overlap the normal working hours of the students of the educational institutions recognised by the Government or, as the case may be, university, and he shall follow the orders issued by the competent authority in this behalf. **The fees payable by a student to a coaching class shall be such as may be specified by the Government, from time to time, by notification in the Official Gazette**, and no proprietor of a coaching class shall receive or claim from any student or his parents or guardian any fees more than the fees specified by the Government unless permitted in writing.¹⁵⁸ the premises is conducive for conducting coaching classes and provided with adequate lighting and ventilation, with a minimum area of 22 sq. metres. No registered coaching class shall be permitted to enrol more than 25 students in one batch and the number of such batches shall not exceed more than six by the proprietor of registered coaching class.¹⁵⁹

IN KARNATAKA, the conditions for registration of the Tutorial Institutions are (a) It should have suitable building with one room for each class, course or section. Each student shall have five to seven square feet space. The number of students in each class, course or section shall not exceed thirty. (b) Each class room shall have sufficient number of long benches of dual desks and one table and chair for the teacher. Each classroom shall have one black-board, either of wooden or roll up or walled one. (c) The building shall have sufficient sanitary facilities with proper ventilation and safe drinking water facilities. There shall be separate lavatories for boys, girls and staff. A certificate shall be obtained from the appropriate authority of the Municipal Corporation, Municipal Council or other Local Authority regarding the sanitary conditions of the building and

it shall be produced before the registering authority along with the application for registration. (d) There shall be adequate number to teachers possessing qualification prescribed for the teachers teaching at the corresponding level of Institutions. The Officer authorised in this behalf can conduct inspection of tutorial institutions whenever there is a complaint and submit his inspection report to the Deputy Director of Public Instruction if the concerned district. (2) The Deputy Director of Public Instruction of the concerned district may himself conduct inspection of the Tutorial Institution to find out the financial irregularities and other matters relating to account, records, buildings, libraries, laboratory equipment etc., or any other matter relating to the violation of the Act and rules. (3) It shall be the duty of every Tutorial Institution to provide the required information to the officers and to produce all the documents required by them for inspection. Every Tutorial Institution registered is required to submit the Annual Report to the Registering Authority within two months after the end of the academic year.¹⁶⁰ **MANIPUR** requires registration of the coaching institutes, provide their curriculum, academic qualifications of teachers, fees, physical infrastructure. Registering authority has power of civil courts.¹⁶¹

THE ABOVE-MENTIONED PROVISIONS INDICATE THAT IN SOME STATES, THE REGULATION OF COACHING/TUTORIAL INSTITUTIONS IS AVAILABLE BUT IS YET WEAKER THAN NORMS AND STANDARDS IMPOSED ON SCHOOLS.

This lack of strong regulatory framework could be one of the reasons for proliferation of such institutions.

¹⁵⁸ Goa Coaching Classes (Regulation) Act, 2001

¹⁵⁹ Goa Coaching Classes (Regulation) Rules, 2004

¹⁶⁰ The Karnataka Tutorial Institutions (Registration and Regulation) Rules, 2001

¹⁶¹ Manipur Coaching Institute (Control and Regulation) Act 2017



UNDERLYING PRINCIPLES, ASSUMPTIONS OR EVIDENCE

**NATURE AND MODALITY OF THE REGULATION
PRESCRIBED**

PROSPECTIVE OR RETROSPECTIVE APPLICATION

INSTITUTIONS

PROCESSES

One of the underlying principles that governs the private providers in the education market in India is that education is a non-profit activity. This principle has been expressly articulated in the legislation and has been reaffirmed by a number of court judgments pertaining to not only school education but also higher education. The Supreme Court as well as the High Courts of various Indian States have **censured ‘commercialisation of education’** (*Modern School v. Union of India*, AIR 2004 SC 2236), banned the charging of capitation fee (*Mohini Jain v. State of Karnataka* (1992 3 SCC 666) and emphasized on the state’s duty to invest in improving educational facilities (*K. Krishnamacharyulu v. Sri Venkateswara Hindu College of Engineering*, AIR 1998 SC 295). In one case, the Gujarat High Court held that the obligation to provide education is not discharged by merely establishing schools or funding them, but by enacting regulations to ensure that these schools cater to the needs of people, particularly the weaker sections, and promote educational excellence (*The Proprietary High School Trust, Ahmedabad v. State of Gujarat*, AIR 1985 Guj 146). The landmark judgment in the *T.M.A. Pai* case in 2003 established that while private schools had the broad autonomy to fix their admission policy and fee structure, profiteering was disallowed and private schools could only make a ‘reasonable surplus’ (*T.M.A. Pai Foundation v. State of Karnataka*, AIR 2003 SC 355). In 2012, unaided private schools challenged the constitutional validity of the RTE Act, claiming that it violated their rights under Article 19(1) (g), and the law laid down in *T.M.A. Pai* (*Society for Unaided Private Schools v. Union of India*, [2012] 6 SCC 102). The Court held the provisions of the RTE Act to be reasonable and valid restrictions on the autonomy of private schools, although unaided minority schools were exempted from the application of Section 12(1)(c). The main reason for insisting on education as a non-profit activity is that it is established as a charitable activity. In the *TMA Pai* case, the court held, “since the object of setting up an educational institution is by definition ‘charitable’, it is clear that an educational institution cannot charge such a fee as is not required for the purpose of fulfilling that object. To put it differently, in the establishment of an

educational institution, the object should not be to make a profit, inasmuch as education is essentially charitable in nature. There can, however, be a reasonable revenue surplus, which may be generated by the educational institution for the purpose of development of education and expansion of the institution”.

Questions are being raised today about this underlying principle that prevents schools from making profits. The argument for profit cannot be based on the intention to expand or build the educational institutions since that is permitted under the current legal framework. The intention to make education a profit-making activity would then have to rest on the profit motive and there are currently no grounds to justify why schools should be run in a way that gives dividends/share to those who own the school.

THE OBSERVATION IS THAT PRIVATE SCHOOLS ARE ENGAGED IN PROFITEERING AND ARE SEEKING COMMERCIAL INTERESTS.

Profiteering means any amount accepted in cash or kind directly or indirectly which is in excess of the fee fixed or approved as per the provisions of this Act and shall include profit earned from school by trust or company associated with the school in any manner whatsoever.¹⁶² Even though the regulatory framework prohibits these tendencies, the claim against private schools needs to be supported by evidence. The move towards transparency and accountability will help track data for schools. Fee regulation is another method by which states can play a role in curbing commercialization among private schools. However, given the diversity of schools, it would be useful to understand the costs of running a school, how private schools mobilize capital, role of equity funds in this regard and identify the extent to which schools are generating surplus or incurring losses.

¹⁶² As defined by the Gujarat Self-Financed Schools (Regulation of Fees) Act, 2017 and similarly defined in other state legislation.

NATURE AND MODALITY OF THE REGULATION PRESCRIBED

As seen in the earlier section, the regulatory framework currently applicable for the school education sector in India is complex and works at different levels. Over the years, there have been concerns about **the ability of the state to perform the regulatory functions in an effective and efficient manner**. These concerns have stemmed from the following key factors: increase in the complexity and variety of private providers of education, increase in the demand for private schooling, increase in the number of regulations that are applicable to the private schools, increase in the areas/activities that are getting regulated, the stress and strain on the administration to implement, enforce and monitor compliance without corresponding increase in staff and resources, increasing litigation from the private sector and above all the pressure to protect and fulfill right to education of a decent quality to all children. Furthermore, there has been a growing critique about the state ability to regulate and the de facto deregulation that is taking place in the wake of increasing profiteering and commercialization of education. On this background, the National Education Policy proposes changes to the

nature and the modality of regulation. There are two different proposals: institutions and processes.

Most of the regulatory framework dates back decades and was formulated at a different time for a different set of private providers of schools. In addition to the older legislation and standards adopted at the state level, the RTE Act, the state rules and additional state regulations apply to the private schools. As found in this research, **some of the states have framed new legislation without striking out the provisions of older legislation that have become invalid. While the newer legislation and regulation would apply, it could create confusion among schools, parents and civil society organizations on applicability of provisions**. States like Delhi have reviewed the older norms by constituting the Shailaja Chandra Committee and looked into the need to reform the older provisions in the light of RTE Act and Rules and the newer regulations. This section looks at some of the areas that have got de-regulated or areas where the regulation is getting questioned.

PROSPECTIVE OR RETROSPECTIVE APPLICATION

One of the key tensions with regards to regulatory norms is if they should be **applied prospectively or retrospectively**. In the case of Delhi, the land norms that have been laid down by Master Plan 2021 with effect from 7.2.2007 in which a requirement of 800 square meters has been stipulated for granting school recognition is being contested. According to the Report of the Review Committee on The Delhi School Education Act and Rules, 1973 (also known as the Shailaja Chandra Committee), RTE does not specify land norms for recognition. The

earlier norm under the Delhi School Education Act of 200 square yards has been replaced by a higher norm in the Master Plan 2021. The report quotes that the Additional Director of Education in the Municipal Corporation of Delhi indicated that while 61% would qualify if the old norms were to be applied only 16% unrecognized schools would qualify for recognition after 2007 by using the Master Plan 2021 norms. Thus, the contention is should norms be applied prospectively or retrospectively.

INSTITUTIONS

The NEP (2020) asserts that given that “all main functions of governance and regulation of the school education system - namely, the provision of public education,

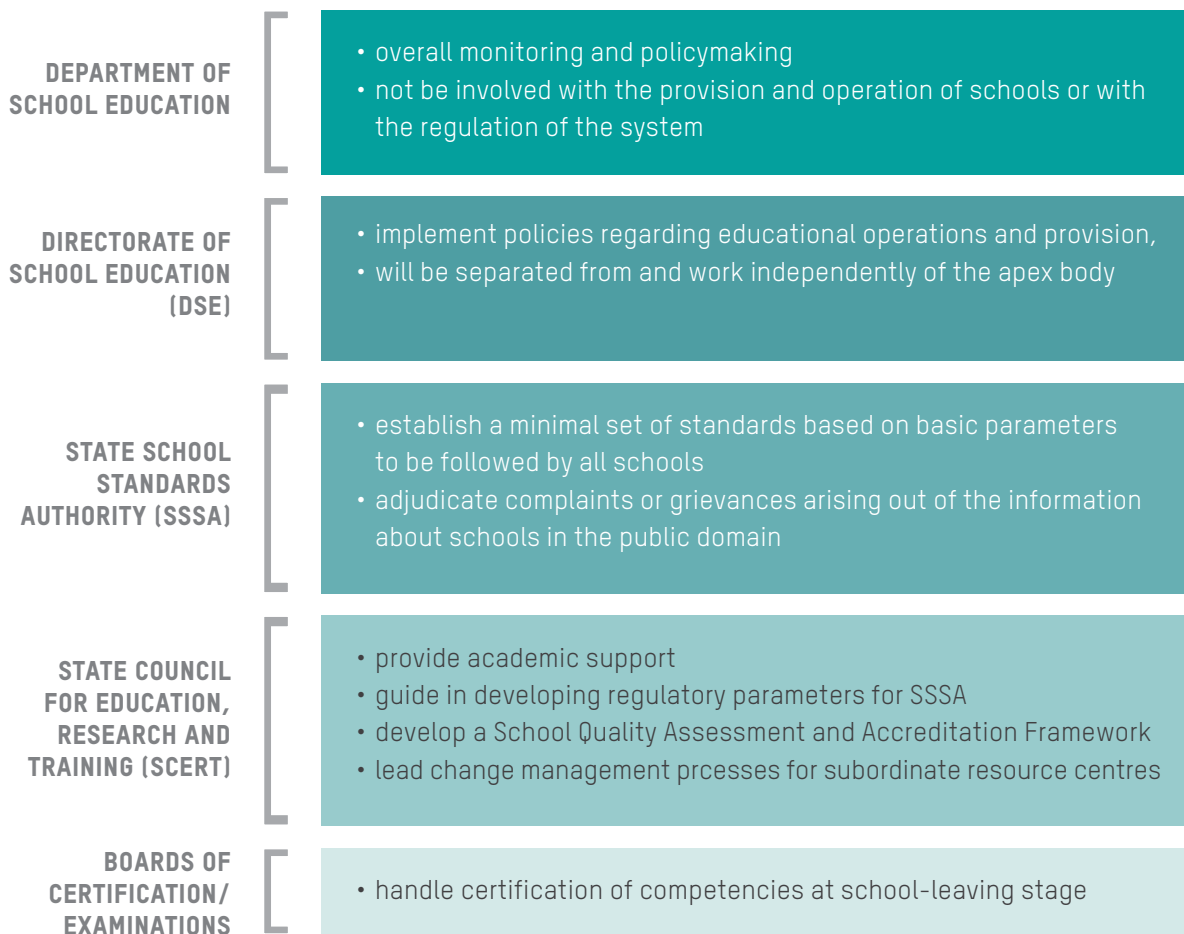
the standard-setting for educational institutions, and policymaking - are handled by a single body, i.e., the Department of School Education or its arms (e.g.,

the offices of the DEO, BEO). This leads to conflicts of interest and excessive centralized concentrations of power; it also leads to ineffective management of the school system, as efforts towards quality educational provision are often diluted by the focus on the other roles, particularly regulation, that the Departments of School Education also perform". (para 8.2).

Second, it states that "the current regulatory regime also has not been able to curb the rampant commercialization and economic exploitation of parents by many for-profit private schools, yet at the same time; it has all

too often inadvertently discouraged public-spirited private/philanthropic schools. Therefore, it proposes that the "private/philanthropic school sector must also be encouraged and enabled to play a significant and beneficial role" (para 8.4). There has been far too much asymmetry between the regulatory approaches to public and private schools, even though the goals of both types of schools should be the same: to provide quality education" (para 8.3.). The NEP proposes a separation of roles for different bodies, which is presented with the help of Figure 2.

FIGURE 2. PROPOSED REGULATORY FRAMEWORK UNDER THE NATIONAL EDUCATION POLICY



The proposed framework under the National Education Policy will consist of the Department of School Education which is the apex state-level body in school education being responsible for overall monitoring and policymaking but it will not be involved with the provision and operation of schools or with the regulation of the system. This is expected to eliminate conflicts of interest. The Directorate of School Education (DSE) will be responsible for the educational operations and service provision for the public schooling system of the whole state and will have nothing to do with regulation.

A NEW INDEPENDENT, STATE-WIDE BODY CALLED THE STATE SCHOOL STANDARDS AUTHORITY (SSSA) WILL BE SET UP TO REGULATE ALL SCHOOLS AND ENSURE THAT THEY FOLLOW CERTAIN MINIMAL PROFESSIONAL AND QUALITY STANDARDS.

This function is currently being done by the state and the district education departments. The SSSA is expected to establish a minimal set of standards based on basic parameters (namely, safety, security, basic infrastructure, number of teachers across subjects and grades, probity, and sound processes of governance), with the help of the SCERT. This is expected to bring down significantly the heavy load of regulatory mandates currently borne by schools. Any complaints or grievances arising out of the information about schools on the public domain shall be adjudicated by the SSSA. For academic matters, including academic standards and curricula in the State, the SCERT in close consultation and collaboration with the NCERT, will be responsible for providing academic support with the help of subordinate academic support structures such as the BRCs, and DIETs. **The SCERT will also develop a School Quality Assessment and Accreditation Framework (SQAAF) with wide consultations with all stakeholders and lead the “change management process” for the reinvigoration of CRCs, BRCs and DIETs. The Boards of Certification/Examination in each State will continue to**

be responsible for the examinations and certification of competencies of students at the school-leaving stage (para 8.5).

There are two main changes in the proposed framework. One is **the vertical separation of policy making** handled by Department of School Education, from the administration of public schools handled by the Directorate of School Education. The second change is a **horizontal separation of the regulation function to be carried out by an independent body**. The two problems that would be addressed by these policy proposals are the elimination of conflicts of interest and a reduction of the heavy load of regulatory mandates borne by the schools. While these proposals may be helpful in this regard, they would bring focus and efficiency by dividing different functions currently performed, it is unclear what the assumptions underlying the claims of conflict of interests are.

There **does not seem to be any evidence indicating** that state officials are using their **regulatory powers to control the private schools in a way that protects their own interests or public schools**. Although, in principle, there could be a conflict if a provider is also entrusted with regulation, we do not have any data to show that this conflict of interest plays out adversely for the private providers or that the government is stifling competition from private schools using their regulatory powers. Moreover, **government has the sole responsibility to fulfill right to education**. The closure of schools in certain states has resulted on account of their flouting the minimum norms prescribed, and not on account of these schools competing with the government schools. An interesting issue that needs to be also considered is that of closure of government schools and if the claim of conflict of interest can be tested in areas where government schools were closed, and to what **extent were regulations enforced against private schools** in that area to ensure that they were held up to the existing regulatory standards and what was the nature of regulation of private schools.

The horizontal separation may be **helpful if it brings more human resources into the system and infuses focus and efficiency in functioning**. However, the policy proposal is not clear if this would be a statutory body. There

are two concerns with this proposition of horizontal separation. One is, an independent body by itself does not guarantee efficiency and improved administration because it is a function of the statutory provisions that determine its workings. The National Council for Teacher Education is an example of an independent statutory regulatory body which has been inundated with issues that have necessitated reforms. The second concern is that **establishment of an independent regulatory body by itself would not result in simplifying the regulatory burden.** That would require a separate exercise of

harmonization of the norms and streamlining of the regulatory processes. In this regard, the evidence about the issues and effectiveness of Ofsted in the UK needs to be taken on board. In sum, while the horizontal and the vertical separation of functions will bring focus, additional human resources and efficiency to the system, the claims on which these are based are not fully substantiated with evidence. Moreover, the specific details of how these bodies would work are significant matters, yet missing in the proposal.

PROCESSES

Another aspect of the changes proposed are with regards to the processes of conducting regulation. The policy suggests the key processes as shown in Figure 3.

FIGURE 3. PROPOSED PROCESSES FOR REGULATION



The key processes suggested for regulation are accreditation and self-audit which will be used by the SSSA to implement the regulatory frameworks. **Transparent public disclosure of all regulatory information, as laid down by the SSSA, will be used extensively for public oversight and accountability. The dimensions on which information has to be disclosed, and the format of disclosure, will be decided by the SSSA. It will have to be made available and kept updated by all schools, on the aforementioned public website maintained by the SSSA and on the schools' websites. An effective quality self-regulation or accreditation system will be instituted for all stages of education (para 8.5). "Public disclosure on the school website and on the SSSA website - for both public and private schools - would include (at the very least) information**

on the numbers of classrooms, students, and teachers, subjects taught, any fees, and overall student outcomes on standardized evaluations such as the NAS and SAS." (para 8.7). These processes are an extension of what was prescribed under the Model Rules on RTE that were also adopted by several states. However, this marks a departure from the regulatory processes used prior to the RTE. These processes are based on transparency and accountability but little is known about how it has worked in the post-RTE context. Accreditation has been used in the context of higher education, and this can be used as evidence to lay down these processes. The capacity of small schools, particularly those located in remote areas to maintain websites and use technology to update information and conduct self-audits will also have to be examined.



AREAS WHERE WORK NEEDS TO BE DONE

PUBLIC INTEREST

**INPUT-BASED VERSUS OUTCOME-BASED
REGULATION**

MARKET REGULATION

FLEXIBILITY

Based on the above discussion, some of the areas where work needs to be undertaken are listed below along with suggested approach that can guide the work.

PUBLIC INTEREST

One of the key ideas that emerges from the regulations applied to opening of new schools is that of public interest. Schools are given recognition or they are closed down on account of public interest. The state acts in public interest. Public interest is defined as “includes public order, public health, public morality and other similar purposes.”¹⁶³ As can be seen, this is a broad definition and consists of a set of words that have no direct bearing on education or on starting of a school. It is also not clear how is public interest determined. Given this ambiguity, **the regulations use another phrase which is “real need” or a “felt need”**. This is more specific than public interest and is operationally seen to have been used more often than “public interest.”

In **Arunachal Pradesh**, the school serves a real need of the locality and is not likely to affect adversely the enrolment in nearby Government School or School which has already been recognized by the Director of School Education. According to **Delhi** Education Code, school meets a real need of the locality and is not likely to adversely affect the enrolment in the already recognized neighbouring school. According to The Delhi School Education Rules, 1973 “Provided that the Administrator shall, if he is of opinion that the number of schools existing in the Zone where the new school is proposed to be opened is sufficient to meet the needs of the Zone, inform the person or persons by whom the intimation was given to him that the opening of the new school in such Zone would be against the public interest and may indicate, to such person or persons, any other Zone which, in his opinion, needs the establishment of a new school, and thereupon it would be open to such person or persons to open a new school in the Zone indicated by the Administrator.” In **Goa**, the permission to establish such a school may be granted by the Director after hearing all objections received on the proposal to establish such school.¹⁶⁴ **In Gujarat, no new school**

will ordinarily be allowed to be opened unless the Board is satisfied that it will fulfil a felt need of the locality concerned. The body proposing to start a new school will have to give convincing proofs regarding the nature of the need. No new school will ordinarily be allowed to be opened in a locality if the Board is convinced that it is likely to result in unhealthy and/or unfair competition with an existing institution within a reasonable distance, which in rural areas may be taken as 5 kms. If, as a consequence of starting of a new school, any school already in existence in the same locality suffers a loss of more than 20 per cent in its enrolment, this would be considered as a positive proof of unhealthy competition having occurred, and the Board may on this basis alone, recommend that no grant-in-aid should be paid to such a newly opened school. It further elaborates that as far as possible, the starting of new schools will be related to the population of the area, and a working basis may be taken as one secondary school for every 3,000 population. The Educational Survey will also be kept in mind while deciding new applications. Areas which are already saturated with secondary schools will have to produce very strong reasons for starting another school. This provision may, however, be relaxed in the case of remote and cut off areas, where the population is mostly of adivasis or backward classes. Even there, the 5 km. limit will normally be adhered to. In Kerala RTE Rules, the locality in which the school is proposed has to have a proven educational need as revealed in school mapping carried out by the authorized agency and such educational need shall be certified by the local authority and the AEO. In **Maharashtra** RTE Rules 2011, the schools shall be recognized or granted permission if they conform to the required norms standards only in those places where it is found to be an actual need on the basis of school mapping.

163 Arunachal Pradesh Education Act 2010, The Karnataka Education Act, 1983

164 The Goa, Daman and Diu School Education Act, 1984 and Goa, Daman and Diu School Education Rules, 1986.

From the above-mentioned provisions, it is clear that **the need is not as per what the public or the community needs but in terms of protecting existing schools from competition and restricting entry of new private providers to retain the monopoly of the early private providers.** This goes against the grain of providing choice, because the schools that exist may not serve the needs of the parents and they are entitled to having a range of providers based on the differentiated services they bring in, and not be deprived of the choice for the benefit of existing providers. Such a provision protects

interests of the private providers, instead of protecting the right to choose of the consumers.

This is one of the reasons why the Shailaja Chandran Committee in Delhi suggested that the provision of Essentiality Certificate contained in Rule 44 of the Delhi School Education Act may be deleted and it should be left open to the market to decide the requirement of schools in a particular area. It must be also noted that there are arguments that choice does not necessarily improve quality of schooling.

INPUT-BASED VERSUS OUTCOME-BASED REGULATION

The issue of input-based regulation vs. outcome-based regulation has been brought up in the context of seeking amendments to the RTE to make it **outcome-based, instead of an input-based regulation** that it provides for at present. The National Policy on Education suggests: “The standard-setting/regulatory framework and the facilitating systems for school regulation, accreditation and governance shall be reviewed to enable improvements on the basis of the learnings and experiences gained in the last decade. This review will aim to ensure that all students, particularly students from underprivileged and disadvantaged sections, shall have free and compulsory access to high quality and equitable schooling from early childhood education (age 3 onwards) through higher secondary education (i.e., until Grade 12). The overemphasis on inputs, and the mechanistic nature of their specifications – physical and infrastructural – will be changed and the requirements be made more responsive to realities on the ground, e.g. regarding land areas and room sizes, practicalities of playgrounds in urban areas, etc. These mandates will be adjusted and loosened, leaving suitable flexibility for each school to make its own decisions based on local needs and constraints, but without in any way compromising on the requirements of safety, security, and a pleasant and productive learning space. Educational outcomes and the transparent disclosure of all financial, academic and operational matters will be given due importance and will be incorporated suitably in the assessment of schools. This will further

improve India’s progress towards achieving Sustainable Development Goal (SDG 4) of ensuring free, equitable and quality primary and secondary education for all children” (para 8.8).

There are a few problems with the proposal. Firstly, the **“mechanistic nature of specifications” of the inputs as mentioned here is not factually correct.** The RTE Act does not specify land areas and room sizes. That is prescribed under either the state legislation or the affiliation byelaws of the examination boards. On the matter of the playgrounds, the government has already issued a clarification indicating that these could be public playgrounds, those of other schools in urban areas. The norms and standards listed under the Schedule of the RTE are the minimum conditions that are required to ensure safety of the children and adequate quality of educational offering. Thus, **it is the state-specific legislation and affiliation bye-laws that might require review and flexibility.** Secondly, there is no doubt that learning outcomes are important goals that the education system should strive for. However, it might be well worth pursuing them through non-legal measures such as assessments or academic support. The **inclusion of outcomes in a legislation will not only require a high degree of precision in terms of what the nature of the outcomes would be but it would also require clearly laid out implications if outcomes are not achieved.** Who would be implicated and what would be the penalty? Education is a complex process,

and inability to achieve outcomes could be a function of various factors such as socio-economic status, parental education, access to education resources, etc. Thirdly, **the affiliation bye-laws of state boards and the CBSE stipulate that non-performance as defined by securing less than 50% pass percentage at boards for three consecutive years, is a ground for withdrawal of affiliation. When these provisions are available at the secondary level, what is additionally attained by bringing it into the elementary level?** The Scheduled norms and standards of the RTE only explain what are

the essential elements of the school and these should not be seen as the sole factors that would produce learning outcomes. The provisions in the RTE that would help produce learning outcomes are those dealing with teacher qualifications, teacher-pupil ratio, teacher duties, curriculum and evaluation many of which are part of the body of the legislation. It is these provisions that should be the focus if outcomes are the main objective, and not the minimum standards for what constitutes schooling.

MARKET REGULATION

Over the years, there has been a change in legal provisions that have dealt with citizens to those that deal with consumers. In a free market system, the role of state as a regulator of an education market is to protect the interests of the consumers. Therefore, the new legislation that is emerging is one that relates to regulation of fees, safety and protection of children in schools, choice in purchase of uniforms, textbooks etc. The nature of these legislations is different as they protect consumers rights from the vagaries of the market or monopolies or

informational asymmetries. With increasing privatization of education, the government is also more likely to **spend its resources on regulation and protecting the consumers rather than fulfilling the right to education and providing for education.** The ability of the state to propose sound regulatory mechanisms that serve public interest and are not influenced by private interests will be tested. The role of consumer forums and the courts in adjudicating matters between private providers and the consumers directly is becoming more significant.

FLEXIBILITY

The nature of regulatory frameworks that are prescribed allow room for exemptions and exceptions. For example, according to The Delhi School Education Rules, 1973, the appropriate authority may, for good and sufficient reason, exempt provisionally any private school seeking requirement from one or more of the provisions of facilities to be provided by the school seeking recognition both for such period as it may consider necessary, provided that the appropriate authority is satisfied that the school will be in a position to fulfill in the near future, the requirements from which it is provisionally exempted. In Gujarat, the Secondary Education Regulations 1974 allow for relaxations if Executive Committee allows relaxation of norms and requirements. While flexibility is a positive characteristic in the wake of dynamically changing sector,

IT IS IMPORTANT TO EXAMINE HOW FLEXIBILITIES BUILT INTO THE REGULATORY FRAMEWORK HAVE BEEN USED, WHO HAS TAKEN BENEFIT OF THESE AND WHAT WAS THE CRITERIA APPLIED TO MAKE THE EXEMPTIONS.

Without this understanding, there is a presumption that arbitrariness and rent-seeking may take place within a cloak of ambiguity that surrounds the regulatory framework.



WHAT NEEDS TO BE DONE

ISSUE-BASED ADVOCACY

ACTION RESEARCH

**HARMONIZING REGULATORY
FRAMEWORKS WITH THE
ABIDJAN PRINCIPLES**

CHANGING NARRATIVES

ISSUE-BASED ADVOCACY

Among the various regulatory issues impacting private schools, **fee regulation** is one of the most contentious ones in recent times. It would be worthwhile taking up issue-based advocacy on fee regulation among states that currently do not have the specific legislation. The key policy asks could be formulation of a new legislation that brings accountability among private schools with regards to the fees charged. As discussed earlier, there are different models of fee regulation legislation followed by the states. Preliminary work among the states that have started implementing the legislation can be done in order to gather **comparative experience and evidence on the potentials and pitfalls in each of the models**. Based on this understanding, advocacy efforts can be launched in select states along with concrete suggestions on existing models and the experience of implementing them in other states.

Another issue that can be taken up in private schools is that of **school safety**. The norms and standards on school safety are clearly articulated and it is non-negotiable given that it affects children's life and safety. An issue-based advocacy on implementation of regulations on school safety can be launched using incidents/accidents that receive media coverage as triggers. This can be done by specifically filing complaints with the Commissions for Protection of Child Rights or local Grievance Redress Committees or filing PIL in the High Court drawing attention to the omissions. It would be worthwhile to require all private schools to file a school safety audit report that can be regularly updated and tracked by parents and the local community.

ACTION RESEARCH

In addition to advocacy, action research in select states is also the need of the hour. This would involve working closely within the state structure on a specific issue and helping the government address a particular challenge with the help of systematic data gathering and analysis. Two areas that can benefit from action research are: How does self-regulation work under the RTE and how can the process be streamlined in accordance to the good governance principles? How can the inspection system be reformed to ensure that it serves both academic and administrative goals?

HARMONIZING REGULATORY FRAMEWORKS WITH THE ABIDJAN PRINCIPLES

The Abidjan Principles offer a strong framework for identifying the gaps in regulations and plugging them at different levels. Harmonization of the regulatory frameworks is required at both the national and state levels, given their complexity, ambiguity and at times inconsistency. It would be important to work at three levels in specifically identified states.

TASK	HOW IT CAN BE DONE
Creating awareness about the Abidjan Principles	Can be done after a meeting with state officials and by inviting their participation. Creating incentives for them to update and conform to the Abidjan Principles
Comprehensive analyses of state regulatory framework using the Abidjan Principles as the benchmark	Can be done with representation of stakeholders from government, civil society and teacher bodies
Suggesting specific changes in the laws that regulate private education	Can be done as a participatory process and changes presented to the representatives of state assembly.

CHANGING NARRATIVES

There is a **need to change certain narratives that are taking root within the policy makers and the larger public**. One of the narratives that needs to be countered is that regulations have to be outcome-based and hence RTE should be amended to do away with the input-based regulation. As discussed above, this is highly flawed, because the RTE provides only for the basic minimum conditions of safety and quality and constitute the lowest common denominator across state norms on recognition of schools. The proposal on making outcomes mandatory part of RTE lacks clarity in terms of what is the outcome/threshold to be achieved and who is liable in case of non-attainment of outcomes. Measuring outcomes and making schools accountable to improving outcomes can be part of a different process. In the case of private schools, this is best left to the market to determine and the state need not regulate outcomes. The narrative needs to be changed within the policy making circles as well as among the civil society through a process of dialogue, dissemination and debate.

REFERENCES

BILLS INTRODUCED AND LAPSED

The Private Schools (Regulation) Bill, 2007. Bill No 17 of 2007 (To be introduced in Lok Sabha)

The Private Schools (Regulation) Bill, 2010. Bill No 13 of 2010 (To be introduced in Lok Sabha)

CBSE AND CISCE GUIDELINES AND CIRCULARS

Council for the Indian School Certificate Examinations (2018). School Safety Manual. New Delhi: CISCE.

Council for the Indian School Certificate Examinations (2016). CISCE Rules for Affiliation. New Delhi: CISCE

Central Board of Secondary Education (2018a). Affiliation Bye-laws. Delhi: CBSE.

Central Board of Secondary Education (2017a). National Disaster Management Authority (NDMA) Guidelines of School Safety Policy. No.CBSE/AFF./Adv-20/2017/1303860.

Central Board of Secondary Education (2019). Adherence of Provision of Affiliation Bye-laws, 2018 regarding running of coaching institutes in school premises-reg. Circular 15/2019. Dated 6th August 2019.

Central Board of Secondary Education (2018b). Sale of Books, Stationery items and Uniforms in Schools – reg. Circular 08/2018 dated 21.06.2018.

Central Board of Secondary Education (2017b). Vidyalay bus mein vidyarthiyon ki suraksha. Dated 23.02.2017.

Central Board of Secondary Education (2019). Adherence to provisions mentioned in Rule 9.1 of the Affiliation Bye-laws, 2018 of CBSE by the Schools Affiliated to the Board regarding the Role of Society/Trust/Company running School. Circular No 5. Dated 30 January 2019.

Central Board of Secondary Education (2017c). Safety of Children in Schools-reg. Circular no 19/2017. Dated 12.09.2017.

Central Board of Secondary Education (2017d). Advisory to schools not to indulge in commercial activities by way of selling of books, stationary, uniforms, school bag etc. and to adhere to the provisions of Affiliation Bye-Laws of the Board. Dated 19.04.2017.

Central Board of Secondary Education (n.d.). Frequently Asked Questions.

Central Board of Secondary Education (2016). Guidelines on work profile of teachers in CBSE affiliated schools-reg. Dated 31.10.2016. No. CBSE/Aff.04/Circular/2016/1152509.

Central Board of Secondary Education (2018c). Safety of children in schools-reg. Circular no 05/2018. Dated 27.03.2018.

Central Board of Secondary Education (2017d). Mandatory appointment of special educator in all schools – reg). Dated 15.06.2017. No.CBSE/AFF/Circular13/2017.

Central Board of Secondary Education (2019). Frequently Asked Questions on Notification dated 01.04.2019.

CONSTITUTION AND CENTRAL LEGISLATION

Constitution of India, Part 3. Fundamental Rights

Constitution of India, Part 4, Directive Principles of State Policy

Ministry of Law and Justice (2002). The Constitution (Eighty-Sixth Amendment) Act, 2002. New Delhi. The Gazette of India.

Ministry of Human Resource Development (2010). Notification dated 16th February, 2010. New Delhi. The Gazette of India.

Ministry of Human Resource Development (2019). The Right of Children to Free and Compulsory Education (Amendment) Act, 2019-reg. Dated 5th March, 2019. New Delhi.

Ministry of Human Resource Development (2012). Notification dated 25th July 2012. New Delhi. The Gazette of India.

Ministry of Law and Justice (2009). The Right of Children to Free and Compulsory Education Act, 2009. New Delhi: The Gazette of India.

Ministry of Law and Justice (2017). The Right of Children to Free and Compulsory Education (Amendment) Act, 2017. New Delhi: The Gazette of India.

Ministry of Law and Justice (2019). The Right of Children to Free and Compulsory Education (Amendment) Act, 2019. New Delhi: The Gazette of India.

Ministry of Human Resource Development (2015). The Right of Children to Free and Compulsory Education (Amendment) Rules, 2015. New Delhi: The Gazette of India.

Ministry of Human Resource Development (2017a). The Right of Children to Free and Compulsory Education (Amendment) Rules, 2017. New Delhi: The Gazette of India.

Ministry of Human Resource Development (2010). The Right of Children to Free and Compulsory Education Rules, 2010. New Delhi: The Gazette of India.

Ministry of Human Resource Development (2017b). The Right of Children to Free and Compulsory Education (Second Amendment) Rules, 2017. New Delhi: The Gazette of India.

Ministry of Human Resource Development (2012). The Right of Children to Free and Compulsory Education (Amendment) Act, 2012. New Delhi: The Gazette of India.

MHRD NOTIFICATIONS

Ministry of Human Resource Development. Guidelines under section 35 (1) of the Right of Children to Free and Compulsory Education (RTE) Act, 2009 for implementation of clause c of Sections 8&9 of the RTE Act. Dated 26th October 2012. F.No. 1-15/2010 EE4.

Ministry of Human Resource Development. Implementation of National School Safety Guidelines – regarding. Dated 27th February 2017. F.No. 4-1/2016-EE.16.

Ministry of Human Resource Development. Guidelines on safety and security of children. Dated 9th October 2014. DO No. 10-11/2014-EE.4.

Ministry of Human Resource Development. Requirement of playgrounds specified under Schedule to the Right of Children to Free and Compulsory Education (RTE) Act, 2009-reg. Dated 26th October 2012. F.No.1-15/2010-EE.4 (Pt.).

Ministry of Human Resource Development. Advisory on implementation of the provisions of section 29 of the Right of Children to Free and Compulsory Education (RTE) Act, 2009-reg. Dated 31 January 2012. F.No. 1-15/2010 EE 4.

Ministry of Human Resource Development. Guidelines under Section 35 (1) of the Right of Children to Free and Compulsory Education Act, 2009 regarding its applicability to Minority Institutions – reg. Dated 23rd November 2010. F.No. 1-15/2010/EE.4.

Ministry of Human Resource Development. Draft Guidelines of fixing accountability of school management for uploading on

MHRD website. Dated 20th August 2018. DO. NO. 1-3/2018-IS-3/IS-16.

Ministry of Human Resource Development. Guidelines for curbing malpractices in schools as per provisions of the RTE Act, 2009. Dated 8th June 2016. D.O. No. 1-2/2016-EE-4. Ministry of Human Resource Development.

Ministry of Human Resource Development. Guidelines under Section 35(1) of the Right of Children to Free and Compulsory Education (RTE) Act, 2009 in respect of Residential Schools – reg. Dated 13th July, 2012. F.No. 1-3/2010-EE4.

Ministry of Human Resource Development. Guidelines under Section 35 (1) of the Right of Children to Free and Compulsory Education (RTE) Act, 2009 regarding free and compulsory education in a neighbourhood school. Dated 25th July 2011. F.No.1-15/2010-EE-4.

Ministry of Human Resource Development. Guidelines under Section 35 (1) of the Right of Children to Free and Compulsory Education Act, 2009 regarding procedure for admission in schools under Section 13(1) and section 12(1)(c) of the RTE Act-regarding. Dated 23rd November 2010. F.No.1-15/2010-EE-4.

National Council for Teacher Education (2010). Notification dated 23rd August 2010. New Delhi: The Gazette of India.

NCPCR GUIDELINES

National Commission for Protection of Child Rights (2017). Manual on Safety and Security of Children in Schools. New Delhi: NCPCR.

National Commission for Protection of Child Rights (2018). Regulatory Guidelines for Hostels on Educational Institutions for Children. New Delhi: NCPCR.

National Commission for Protection of Child Rights (n.d.). Regulatory Guidelines for Private Play Schools. New Delhi: NCPCR.

National Commission for Protection of Child Rights (2017). Manual on Safety and Security of Children in Schools. New Delhi: NCPCR.

NOTIFICATIONS BY OTHER BODIES

National Council for Teacher Education. The National Council for Teacher Education (Recognition, Norms and Procedure) Amendment Regulations, 2018. F. No. NCTE-Regl011/80/2018-MS(Regulation)-HQ. New Delhi: The Gazette of India.

National Council for Teacher Education. National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2014. No. F. 51-1/2014-NCTE (N&S). New Delhi: The Gazette of India.

National Council for Teacher Education. Notification on minimum qualifications for a person to be eligible for appointment as a teacher. F.NO. 61-03/20/2010/NCTE (N&S).

National Council for Teacher Education. Notification on amendment to the notification number F.N. 61-03/20/2010/NCTE/ (NSS), dated the 23rd August, 2010. F. No. NCTE-Regl 012/16/2018. New Delhi: The Gazette of India.

National Council for Teacher Education. National Council for Teacher Education (Determination of Minimum Qualifications for Persons to be recruited as Education Teachers and Physical Education Teachers in pre-primary, Primary, Upper Primary, Secondary, Senior Secondary or Intermediate Schools or Colleges) Regulations, 2014. F.No. 62-1/2012/NCTE (N&S). New Delhi: The Gazette of India.

National Council for Teacher Education. Notification to the Notification No 215 dated 25th August 2010 laying down minimum qualifications for a person to be eligible for appointment as a teacher. F.No. 61-1/2011/NCTE (N&S). New Delhi: The Gazette of India.

National Disaster Management Authority (2016). National Disaster Management Guidelines School Safety Policy. New Delhi: Government of India.

Department of Revenue, Ministry of Finance. Service Tax on education services – clarification-circular dated 19-09-2013. Circular File no. B1/14/2013-TRU.

STATE LEGISLATION

ANDHRA PRADESH

The Andhra Pradesh Education Act, 1982

The Andhra Pradesh Education (Amendment) Act 1987

The Andhra Pradesh Education (Amendment) Act 2014

The Andhra Pradesh Education Department Rules 1986

The Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration & Control of Schools) Rules, 1988

The Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration and Control of Schools) Rules, 1994

The Andhra Pradesh Grant in Aid Code, 1965

The Andhra Pradesh Prohibition of Ragging in All Educational Institutions Rules, 2002

The Andhra Pradesh Right of Children to Free and Compulsory Education Rules, 2010

The Andhra Pradesh Rules relating to Establishment, Recognition, Registration and Regulation of Registered Schools and Conversion of the Existing Private Schools into Registered Schools under the Private Management, 1987.

The Andhra Pradesh Study of Languages in School Education Rules 2000 and Amendment orders 2017

The Andhra Pradesh School Education (Community Participation) Act, 1998

Andhra Pradesh GO on Exemption of examination fees 2009

Andhra Pradesh GO on CCE 2015

Andhra Pradesh GO on CCE 2016

ARUNACHAL PRADESH

The Arunachal Pradesh Education Act 2010

The Arunachal Pradesh Right of Children to Free and Compulsory Education Rules, 2010

The Arunachal Pradesh Education Rules 2010

ASSAM

The Assam Education (Provincialisation of Services of Teachers and Reorganisation of Educational Institutions (Amendment) Act, 2018

The Assam Education (Provincialisation of Services of Teachers and Re-organisation of Educational Institutions) Act 2017

The Assam Education Service Rules, 1982

The Assam Elementary Education (Provincialisation) Service and Conduct Rules, 1981

The Assam Junior College (Provincialisation) Act, 2012

The Assam Non-government Educational Institutions (Regulation and Management) Act, 2006

The Assam Right of Children to Free and Compulsory Education Rules, 2011

The Assam Secondary Education (Amendment) Act, 1973

The Assam Secondary Education (Provincialised) Service Rules, 1982

The Assam Secondary Education Act 1961

The Assam Venture Educational Institutions (Provincialisation) of Services (Amendment) Act 2012

The Assam Venture Madrassa Educational Institutions (Provincialisation of Services) Act, 2011

The Assam Venture Madrassa Educational Institutions (Provincialisation of Services) Amendment Act 2013

The Assam Venture Madrassa Educational Institutions (Provincialisation of Services) Amendment Act 2014

BIHAR

The Bihar Coaching Institute (Control & Regulation) Act 2010

The Bihar Education Project Financial Regulations

The Bihar Education Project Service Regulations 1994

The Bihar High School (Control and Regulation of Administration) Act, 1960

The Bihar Nongovernment (Taking Over of Schools) Act 1976

The Bihar Nongovernment Elementary Schools (Taking Over of Control) Act, 1976

The Bihar Nongovernment Secondary School (Taking over Management and Control) (Amendment) Act 2011

The Bihar Nongovernment Secondary Schools (Taking over of management and control) Ordinance 1980

The Bihar Panchayat Elementary Teachers (Employment and Service Conditions) (Amendment) Rules 2015

The Bihar Private Schools (Fee Regulation) Act 2019

The Bihar Right of Children to Free and Compulsory Education Act (Amendment) Rules 2013

The Bihar Right of Children to Free and Compulsory Education Rules 2011

The Bihar School Examination Board (Amendment) Act 2011

The Bihar School Examination Board Act 1952 and Rules 1963 (outline)

The Bihar School Examination Board Affiliation (High Secondary) (Amendment) Regulation, 2013

The Bihar School Examination Board Affiliation Bye-Laws 2011

The Bihar School Examination Board (Amendment) Act 2007

बिहार राज्य मदरसा शिक्षा बोर्ड अधिनियम, 1981

CHANDIGARH

Allotment of Land to Educational Institutions (Schools), Etc. on Lease-hold Basis in Chandigarh Scheme, 1996

Government Educational Institutions Building Fund Rules, 1979

Notification regarding regulating fee of unaided educational institutions, 2018

CHHATTISGARH

Chhattisgarh Madarsa Board (Sanshodhan) Act, 2007

Chhattisgarh Right of Children to Free and Compulsory Education Rules 2010

Chhattisgarh GO on School Management Committee 2011

Chhattisgarh GO on School Management Committee 2013

DELHI

The Delhi Education Code 1965

The Delhi Primary Education Act 1960

The Delhi Right of Children to Free and Compulsory Education Rules 2011

The Delhi School Education (Free seats for Students belonging to Economically Weaker Sections And Disadvantage Group) Amendment Order 2013

The Delhi School Education (Free seats for Students from Economically Weaker Sections and Disadvantaged Groups) Order 2011

The Delhi School Education Rules 1973

The Delhi Schools Education Act 1973

The Recognised Schools (Admission Procedure for Pre-primary classes (Amendment) Order 2013

Report of the Review Committee on Delhi School Education Act and Rules, 1973, Vol 1

GOA

The Goa Children's Act, 2003

The Goa Coaching Classes (Regulation) Act, 2001

The Goa Compulsory Elementary Education Act, 1995

The Goa Education Development Corporation 2003

The Goa Right of Children to Free and Compulsory Education Rules 2012

The Goa Secondary and Higher Secondary Education Amendment Rules 2001

The Goa, Daman and Diu School Education Act, 1984 (includes Amendments made till 2010)

The Goa, Daman and Diu School Education Rules, 1986

The Goa, Daman and Diu Secondary and Higher Secondary Education Board Act, 1975 and Rules 1975

The Goa School Education Act, 1984

GUJARAT

The Gujarat Right of Children to Free and Compulsory Education Rules 2012

The Gujarat Secondary Education Act 1972

The Gujarat Secondary Education Regulations 1974

The Gujarat Self-Financed Schools (Regulation of Fees) Act, 2017

The Gujarat Self-Financed Schools (Regulation of Fees) Rules 2017

HARYANA

Existing Provisions of Haryana School Rules 2003 before amendments in 2004 and 2007

The Haryana Board of School Education Act, 1969

The Haryana Education Code 1978

Haryana GO on Conditions on which NOC will be issued for grant of status of Minority Education Institutions 2013

The Haryana Right of Children to Free and Compulsory Education Rules 2011
 The Haryana School Amendment Rules 2014
 The Haryana School Education (Amendment) Rules 2004, Second amendment 2004, and Amendment, 2007
 The Haryana School Education (Amendment) Rules 2009
 The Haryana School Education (Third Amendment) Rules 2013
 The Haryana School Education Act, 1995
 The Haryana School Education Rules, 2003

HIMACHAL PRADESH

The Himachal Pradesh Board of School Education General Regulation 1993
 The Himachal Pradesh Board of School Education Act 1968
 The Himachal Pradesh Board of School Education Affiliation Regulations-Bye-laws 1992 (Amended Feb 1995, Nov 2006, Aug 2013)
 The Himachal Pradesh Board of School Education Examination Regulations, 1994
 The Himachal Pradesh Compulsory Primary Education Act, 1953
 The Himachal Pradesh Compulsory Primary Education Act, 1997
 The Himachal Pradesh Private Educational Institution (Regulation) Rules 2003
 The Himachal Pradesh Private Educational Institutions (Regulation) Act 1997
 The Himachal Pradesh Private Educational Institutions (Regulatory Commission) Act, 2010
 The Himachal Pradesh Private Educational Institutions (Regulatory Commission) Rules 2011
 The Himachal Pradesh Right of Children to Free and Compulsory Education Rules 2011
 The Himachal Pradesh Rules Governing Recognition of Schools 1986
 The Himachal Pradesh Secondary Education Code 2012
 The Himachal Pradesh Rules Governing Grant in Aid in the Education Department
 Himachal Pradesh GO Regarding implementation of Private Education Institution Regulation Act 1997

JAMMU AND KASHMIR

The Jammu and Kashmir (Prevention of Unfair Means) Examination Act 1987
 The Jammu and Kashmir Board of School Education Act 1975
 The Jammu and Kashmir School Education Act 1984
 The Jammu and Kashmir School Education Act, 2002
 The Jammu and Kashmir School Education Rules, 2010
 The Jammu and Kashmir State Board of School Education (Affiliation Norms and Procedure for Elementary Teacher Training Course 2013
 The Jammu and Kashmir State Board of School Education Regulations 1992

JHARKHAND

The Jharkhand Education Tribunal Act 2005
The Jharkhand Right of Children to Free and Compulsory Education Amendment Rules, 2012
The Jharkhand Right of Children to Free and Compulsory Education Rules 2011
The Jharkhand State Play Schools (Recognition and Control) Rules, 2017
The Jharkhand State Unaided Educational Institution (Grant) Act, 2004
The Jharkhand State Unaided Educational Institution (Grant) Rules, 2004
The Jharkhand Education Tribunal Amendment Act 2017 (Section 3)

KARNATAKA

The Karnataka Edu-Compendium Vol2 Grant in Aid Code
The Karnataka Edu-Compendium_Vol1 Acts and Rules
The Karnataka Educational Institutions (Regulation of certain fees and donations) Amendment Rules 2018
The Karnataka Education Institutions (Classification, Regulation and Prescription of Curricula etc.) Amendment Rules 2018
The Karnataka Education Institutions (Classification and Registration) Amendment Rules 2018
The Karnataka Educational Institutions (Recognition of Primary and Secondary Schools) Amendment Rules 2018
The Karnataka Educational Institutions (Classification and Registration) Amendment Rules 2017
The Karnataka Educational Institutions (Recognition of Primary and Secondary Schools) Amendment Rules 2017
The Karnataka Educational Institutions (Classification, Regulation and Prescription of Curricula etc.) Amendment Rules 2017
Karnataka School Recognition User Manual
The Karnataka Educational Institutions (Regulation of Certain Fees and Donations) Rules, 1999
The Karnataka Secondary Education Examination Board Act, 1966 and The Rules, Regulations, Bye-laws and Notifications thereunder.
The Karnataka Secondary Education Examination Board (Amendment) Act, 2002
The Karnataka Educational Institutions (Prohibition of Capitation Fee) (Amendment) Act, 2002
The Karnataka Secondary Education Examination Board (Amendment) Act, 2006
The Karnataka Educational Institutions (Certain terms and Conditions of Service of Employees in Private Unaided Institutions) Rules 2005
The Karnataka Secondary Education Examination Board (Amendment) Regulations 2012
Note on Abolition of Capitation Fee in Private Institutions And Taking Action Against Such Institutions
The Karnataka Right of Children to Free and Compulsory Education Rules 2012
The Karnataka Educational Institutions (Change in Governing Council and Location) Rules, 2006
The Karnataka Educational Institutions (Taking over management, Requisition and Acquisition) Rules 2005
The Karnataka Right of Children to Free and Compulsory Education School Management Committee notification 2012

KERALA

The Kerala Education Act 1958 and Kerala Education Rules 1959

The Kerala Education Department (Inspection) Code 1966

The Kerala Right of Children to Free and Compulsory Education Rules 2011

MADHYA PRADESH

The Madhya Pradesh Ashaskiya School Viniyam Adhinyam 1975

The Madhya Pradesh Jan Shiksha (Sanshodhan) Adhyadesh, 2010

The Madhya Pradesh Jan Shiksha Niyam 2003

The Madhya Pradesh Madhyamik Shiksha Adhinyam 1965

The Madhya Pradesh Niji Vidyalaya (Fees Tatha Sambandhit Vishayon ka Viniyaman) Vidheyak, 2017

The Madhya Pradesh Prathamik, Middle School Tatha Madhyamik Shiksha (Pathya Pustakon Sambandhi Vyavastha) Adhinyam, 1973

The Madhya Pradesh Right of Children to Free and Compulsory Education Rules 2011

The Madhya Pradesh Niji Vyavsayik Shikshan Sanstha (Pravesh ka Viniyaman Avam Shulk Ka Nirdharan) Adhyadesh, 2007

मध्य प्रदेश अशासकीय शिक्षण संस्था (अनुदान का प्रदाय) अधिनियम, १९७८

MAHARASHTRA

The Maharashtra Right of Children to Free and Compulsory Education Rules 2011

The Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act 1977

The Maharashtra Secondary and Higher Secondary Education Boards Regulations, 1977 (as amended up to 31st October 1990)

The Maharashtra State Council of Examinations Act 1998

The Maharashtra Prohibition of Ragging Act 1999

The Maharashtra Right to Public Services Act 2015

The Bombay Primary Education Act 1947 as modified upto 31 December 1989

The Maharashtra Secondary Schools Code 1963-64

The Maharashtra Secondary Schools Code Revised 1979, and corrected upto December 1978

The Maharashtra Self-financed Schools (Establishment and Regulation) constitution of the security committees Rules 2013

The Maharashtra Self-financed Schools (Establishment and Regulation) Act, 2012

The Maharashtra Educational Institutions (Transfer of Management) Act, 1971

The Maharashtra Educational Institutions (Prohibition of Capitation Fee) Act, 1987

The Maharashtra Educational Institutions (Management) Act, 1976

The Maharashtra Secondary and Higher Secondary Education Boards Regulations 1977

The Maharashtra Self-financed Schools (Establishment and Regulation) Amendment Act 2017

The Maharashtra Educational Institutions (Regulation of Fee) Act 2011

MANIPUR

- The Manipur Coaching Institute (Control and Regulation) Act 2017
- The Manipur Elementary and Secondary Education Act, 1972
- The Manipur Private School (Registration and Regulation) Act 2017
- The Manipur Right of Children to Free and Compulsory Education Rules 2010
- The Manipur Secondary Education Act 1972

MEGHALAYA

- The Meghalaya Board of School Education (Amendment) Act 2006
- The Meghalaya Board of School Education Act 1973
- The Meghalaya Recognition of Secondary and Higher Secondary Schools Rules 2012
- The Meghalaya Right of Children to Free and Compulsory Education Rules 2011
- The Meghalaya School Education Act 1981
- The Meghalaya School Education Service Rules, 2010
- The Meghalaya School Education Service Rules, 2012

MIZORAM

- The Mizoram Board of School Education (Conditions for Affiliation of Institutions) Regulations 2012
- The Mizoram Board of School Education (Second Amendment) Act, 2008.
- The Mizoram Board of School Education Act 1975 & Amendments 1996_2008_2011_2012 (January & August) & 2014
- The Mizoram Education (Establishment and Management of Private Middle School) Rules 2006
- The Mizoram Education (Grants-in-Aid for General Maintenance of Private School) Rules, 2006
- The Mizoram Recognised Private Schools (Regulation) Rules 2006
- The Mizoram Right of Children to Free and Compulsory Education Rules 2011
- Mizoram Rules and Regulations of the education department

NAGALAND

- The Nagaland Board of School Education Act 1973
- The Nagaland Right of Children to Free and Compulsory Education Rules 2010

ODISHA

- The Odisha Conduct of Examination (Amendment) Act 2016
- The Odisha Education (Establishment, Recognition and Management of Private Jr Colleges Higher Secondary Schools Rules 1991
- The Odisha Education (Payment of Grant-in-aid to High Schools, Upper Primary Schools, Sanskrit Tools and Madrasas) Order, 2013
- The Odisha Right of Children to Free and Compulsory Education Rules 2010
- The Orissa Education (Payment of Grant-in-Aid to High School, Upper Primary Schools, etc.) Amendment Order, 2008

The Orissa Education Act, 1969

The Orissa Education Amendment Act 1974

The Orissa Education Code

The Orissa Educational Institutions (Supersession) of Managing Committee) Validation Act, 1979

The Orissa Elementary Education (Method of Recruitment and Conditions of Service of teachers and officers) Amendment Rules, 2009.

The Orissa Higher Secondary Education (Amendment) Regulation, 1983

The Orissa Rules for the Preparation and Publication of State Textbooks for Primary Schools 1963

The Orissa School Education (Community Participation) Rules 2000

PUDUCHERRY

The Pondicherry State Grant-in-Aid Code for Educational Institutions 1966

The Puducherry Compulsory Elementary Education Act, 2000

The Puducherry Right of Children to Free and Compulsory Education Rules 2011

The Puducherry School Education (Amendment) Rules, 2014

PUNJAB

The Punjab Education Code 1925

The Punjab Education Code Thirteenth Edition 1990

The Punjab Privately Managed Recognised Schools Employees (Security of Service) (First Amendment) Rules 2015

The Punjab Privately Managed Recognised Schools Employees (Security of Service) Act, 1979

The Punjab Regulation of Fee of Un-aided Educational Institutions Act, 2016

The Punjab Right of Children to Free and Compulsory Education Rules 2011

The Punjab School Education Board (Amendment) Act, 2016.

The Punjab School Education Board (Amendment) Act, 2017.

The Punjab School Education Board Amendment Act 2005

The Punjab School Education Board Regulations for Affiliation of Institutions 1988

The Punjab School Education Board Regulations for Affiliation of Institutions 1998 as amended in 1993 and thereafter in 1998, 2004, 2006, 2009

The Punjab School Education Board. Handbook of Manuals Under the Right to Information Act, 2005 (Information upto 31-10-2009)

RAJASTHAN

Budget, Financial and Accounts rules for the Rajasthan Council of Secondary Education

The Rajasthan Education Assistant Services Rules, 2013

The Rajasthan Non-Government Educational Institutions (Recognition_Grant_in_Aid & Service conditions) Rules_1993

The Rajasthan Non-Government Educational Institutions Act 1989

The Rajasthan Public Examination (Prevention of Unfair Means) Act 1992

The Rajasthan Right of Children to Free and Compulsory Education Rules 2011

The Rajasthan Schools (Regulation of Collection of Fee) Act 2013

The Rajasthan Schools (Regulation of Fee) Act 2016

The Rajasthan Schools (Regulation of Fee) Rules 2017

The Education Code of Rajasthan 1957

SIKKIM

The Sikkim Board of School Education Act, 1978

The Sikkim Code Volume 1 (Sikkim Acts (1975-1982))

The Sikkim Education Act 2002

The Sikkim Primary Education Act, 2000

The Sikkim Reservation of Seats in Private Educational Institution Act 2008

The Sikkim Right of Children to Free and Compulsory Education Rules 2010

TAMIL NADU

The Madras Private Educational Institutions Regulation Act 1966

The Tamil Nadu Educational Rules Corrected upto 1971 24th Edition

The Tamil Nadu Elementary Education Act, 1920

The Tamil Nadu Grant in Aid Code 1972

The Tamil Nadu Higher Secondary Educational Acts

The Tamil Nadu Private Schools (Regulation) Act 2018

The Tamil Nadu Recognised Private Schools Regulation Act 1973 and Rules 1974

The Tamil Nadu Revised Draft Code of Regulations for Play Schools, 2015

The Tamil Nadu Right of Children to Free and Compulsory Education Rules, 2011

The Tamil Nadu Schools (Regulation of Collection of Fee) Act 2009

The Tamil Nadu Uniform System of School Education Act, 2010

TELANGANA

The Telangana (Compulsory Teaching and Learning of Telugu in Schools) Act, 2018

The Telangana Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983

The Telangana Private Educational Institutions Grant-in-Aid (Regulation) Act, 1988

The Telangana Private Educational Institutions Maintenance Grant (Regulation) Act, 1995

The Telangana School Education Management (Community Participation) Act, 1998

TRIPURA

The Tripura Board of Secondary Education Act 1973
 The Tripura Education Institutions (Acquisition of Right, Title and Interest) Act 1980
 The Tripura Educational Institutions (Prevention of Ragging) Act 1990
 The Tripura Educational Institutions (Taking Over of Management) Act, 1973
 The Tripura Right of Children to Free and Compulsory Education Rules 2011

UTTAR PRADESH

Shiksha Sanhita 1974
 The Uttar Pradesh Basic Education (Teacher) Service (Twenty Second Amendment) Rules 2018
 The Uttar Pradesh Basic Education Act, 1972
 The Uttar Pradesh Education Institutions (Prevention of Dissipation of Assets) Act, 1974
 The Uttar Pradesh Educational Institutions (Taking Over of Management) Act, 1976
 The Uttar Pradesh GO on Self-financed Independent Schools (Fee Regulation) Act 2018
 The Uttar Pradesh Madhamik Shiksha Parisad Niyam Sangharan 1972-78
 The Uttar Pradesh Madhyamik Shiksha Parisad Niyam Sangreh 1971
 The Uttar Pradesh Right of Children to Free and Compulsory Education (Second Amendment) Rules 2017
 The Uttar Pradesh Right of Children to Free and Compulsory Education Rules 2011
 The Uttar Pradesh Right of Children to Free and Compulsory Education - GO 19 July 2012
 The Uttar Pradesh Self-financed Independent Schools (Fee Regulation) Act 2018
 Uttar Pradesh GOs on RTE
 Uttar Pradesh GO on Admission under Section 12(1)(c), March 2016
 Uttar Pradesh GO on Ensuring Learning Quality August 2013
 Uttar Pradesh GO on Examination and Evaluation Grades 1-8, 26th June 2015
 Uttar Pradesh GO on Fee Reimbursement for 25% students
 Uttar Pradesh GO on Recognition of English medium schools May 2013
 Uttar Pradesh GO on Recognition of Hindi Medium Schools May 2013
 Uttar Pradesh GO on School Management Committee, 28 June 2011
 Uttar Pradesh GO on Screening of children for admission, 15 July 2010
 Uttar Pradesh GO on Sports Policy 27 June 2013

UTTARAKHAND

The Uttarakhand Right of Children to Free and Compulsory Education Rules 2011
 The Uttarakhand Vidyalayi Shiksha Adhiniyam 2006

WEST BENGAL

The Management of Recognized Non-Government Institutions (Aided and Unaided Rules, 1963, as amended upto 9th August, 1984)

The Management of Recognized Non-Government Institutions (Aided and Unaided Rules 1969) as amended upto 1984

The West Bengal Special Rules for the Management of Secondary Schools Established and Run by a Christian Church-Missionary Society

The West Bengal Board of Madrasah Education (Recognition of unaided Madrasahs) Regulations, 2010.

The West Bengal Board of Madrasah Education Act, 1994

The West Bengal Board of Secondary Education (Recognition of Unaided Institution) Bye-laws, 2007

The West Bengal Board of Secondary Education Act 1963 as amended upto 1990

The West Bengal Board of Secondary Education Act 1963 as amended upto 2004

The West Bengal Council of Higher Secondary Education (Admission and Allied Matters) Regulations, 2006

The West Bengal Council of Higher Secondary Education (Amendment) Act, 1984.

The West Bengal Council of Higher Secondary Education (Amendment) Act, 1987.

The West Bengal Council of Higher Secondary Education (Amendment) Act, 1989.

The West Bengal Council of Higher Secondary Education (Amendment) Act, 1990

The West Bengal Council of Higher Secondary Education (Amendment) Act, 1994

The West Bengal Council of Higher Secondary Education (Examination) Regulations, 2006.

The West Bengal Primary Education (Amendment) Act 1988

The West Bengal Primary Education (Conduct of Service of Teachers of Primary Schools) Rules, 2001

The West Bengal Primary Education Act 1973

The West Bengal Right of Children to Free and Compulsory Education Rules 2012

The West Bengal School Service Commission Act-1997

The West Bengal Schools (Control of Expenditure) Act, 2005

The West Bengal Schools Control of Expenditure Act, 2016

The West Bengal State Council of Higher Education Act 2015

INTERNATIONAL TEXTS AND MATERIALS

Committee on Economic, Social and Cultural Rights (1999). Implementation of the International Covenant on Economic, Social and Cultural Rights. General Comment 13 (21st Session) The right to education (article 13 of the Covenant). E/C.12/1999/10.

Human Rights Council (2015). Report of the Special Rapporteur on the right to education, Kishore Singh on Protecting the right to education against commercialization. A /HRC/29/30

----- (2019). The Abidjan Principles: Guiding Principles on the human rights obligations of States to provide public education and to regulate private involvement in education.

United Nations (1966). International Covenant on Economic, Social and Cultural Rights.

United Nations (1989). Convention on the Rights of the Child.

United Nations (2015). Transforming our World: The 2030 Agenda for Sustainable Development. A/RES/70/1.

United Nations (2015). Education 2030. Incheon Declaration and Framework for Action for the Implementation of Sustainable Development Goal 4.

GOVERNMENT REPORTS

Committee of the Central Advisory Board of Education, Ministry of Human Resource Development, Government of India (2005).

Regulatory Mechanisms for Textbooks and Parallel Textbooks Taught in Schools Outside the Government System. A Report.

OTHER REPORTS

Santhosh, Sajad (2014). Analysis of School Fee Regulation in India. New Delhi: Centre for Civil Society.

Dixon, Pauline (2010). RTE Act & Private School Regulation. Policy Review No.4. New Delhi: Centre for Civil Society.

Ambast, Shruti; Gaur, Ankita; Sangai, Ajey (2017). Regulation of Private Schools in India. New Delhi: Vidhi Centre for Legal Policy.

Rao, Kavita (n.d.). Tax Incentives for Education: an assessment. New Delhi: National Institute of Public Finance and Policy.



© Oxfam India October 2020

This publication is copyright but the text may be used free of charge for the purposes of advocacy, campaigning, education, and research, provided that the source is acknowledged in full. The copyright holder requests that all such use be registered with them for impact assessment purposes. For copying in any other circumstances, or for re-use in other publications, or for translation or adaptation, permission must be secured and a fee may be charged. Email policyandresearch@oxfamindia.org

The information in this publication is correct at the time of going to press.

Published by Oxfam India in October 2020. Oxfam India, Unit. No. 411 & 412, NSIC New MDBP Building, 4th Floor, Okhla Industrial Estate, New Delhi-110020

Oxfam India is a movement of people working to end discrimination and create a free and just society. Oxfam India, a completely autonomous Indian organisation, is a member of the global confederation of 20 Oxfams across the world. Oxfam India is registered under Section 8 of the Indian Companies Act, 2013 and have a Foreign Contribution Regulation Act (FCRA) license.



ऑक्सफैम इंडिया
OXFAM
India

A movement
to end
discrimination

Oxfam India, Unit. No. 411 & 412, NSIC New MDBP Building,
4th Floor, Okhla Industrial Estate, New Delhi-110020

+91 (0) 11 4653 8000 | www.oxfamindia.org

 [@OxfamIndia](https://twitter.com/OxfamIndia)  [@OxfamIndia](https://www.facebook.com/OxfamIndia)  [@Oxfam_India](https://www.instagram.com/OxfamIndia)  [Oxfam India](https://www.linkedin.com/company/OxfamIndia)