

# REGULATION OF PRIVATE SCHOOLS IN INDIA

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## I. INTRODUCTION

The last decade has witnessed growth in both the number of private schools in India and the proportion of children enrolled in them. The proportion of private schools rose from 19.49% in 2007-08 to 22.74% in 2014-15.<sup>1</sup> Around the same period, the share of enrolment of children between the ages of 6-14 in private schools rose from 19.3% to 30.8%.<sup>2</sup> These figures show significant variation among States. In 2014-15, the proportion of private schools in Kerala, Delhi and Meghalaya was over 40%, while it was less than 10% in Bihar and Jharkhand.<sup>3</sup>

The term ‘private school’ does not refer to a homogenous entity. Private schools in India may be of different kinds depending on their ownership (aided and unaided), management (minority and non-minority), level (primary, upper primary, secondary) or affiliation (CBSE, ICSE, State board, IB).<sup>4</sup> Over the last few years, a new category has emerged and gained popularity in academic discourse, variously known as ‘budget private school’, ‘affordable private school’ or ‘low-fee/low-cost private school’.<sup>5</sup> Broadly, this category refers to private schools which cater to low-income households.

In this report, we focus on the category of non-minority, unaided private schools and the regulations which pertain to them. These are schools which do not get funds from the government and which are not run by religious and linguistic minorities. They may be of different levels and have different affiliations.

The regulation of private schools in India remains an understudied topic, with little literature on the theory and practice of regulation, or on comparisons of different regulatory policies. Education is listed as a subject in the Concurrent List of the Constitution of India,

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<sup>1</sup> National University for Educational Planning and Administration, ‘Elementary Education in India: Trends 2005-06-2015-16’, accessed <<http://dise.in/Downloads/Trends-ElementaryEducation-2015-16/ElementaryEducationInIndia2015-16.pdf>> Here, ‘private school’ includes both aided and unaided private schools.

<sup>2</sup> ASER Centre, ‘Trends Over Time 2006-2014’, accessed <<http://img.asercentre.org/docs/Publications/ASER%20Reports/ASER%20TOT/fullasertrendsovertime.pdf>> Here, ‘private school’ includes both aided and unaided private schools. The statistics mentioned are for the period 2007-2014.

<sup>3</sup> Mehta, Arun ‘DISE Analytical Tables 2014-15’.

<sup>4</sup> The statistics above include both aided and unaided private schools.

<sup>5</sup> See Dixon and Tooley (2005), Srivastava (2008), Nambissan (2012).

meaning that schools, including private schools, are governed by both Central and State laws. The Right to Education Act, 2009, (hereafter 'RTE Act') lays down norms and standards for private schools, including infrastructure norms, minimum teacher qualifications, pupil-teacher ratios and curricular standards.<sup>6</sup> It also requires all non-minority private schools to reserve 25% of seats in their entry-level class for marginalised children and provide them free education till class 8.<sup>7</sup> The legislation empowers States to enact their own rules to implement its provisions.

However, some aspects of private school operations 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. The issue of fee fixation, in particular, has been controversial. In many States, parent groups, school managements and the government have locked horns over how fee structures should be regulated.<sup>8</sup>

The impact of the norms and standards introduced under the RTE Act on private schools, especially low-fee schools, has attracted criticism from many experts.<sup>9</sup> In 2015, the case of a school run by the non-government organization, Deepalaya, in Delhi, drew public attention to the questionable nature of school recognition norms. The Deepalaya school, which enjoyed a good reputation in the local community, was rendered unrecognised under the RTE Act, as it did not adhere to the new norms.<sup>10</sup> In early 2016, there was a lively debate on the number of private schools which had allegedly closed down because of regulations under the RTE Act.<sup>11</sup>

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<sup>6</sup> Section 19, 23, 29, RTE Act.

<sup>7</sup> However, the RTE Act does not apply to private schools run by religious and linguistic minorities.

<sup>8</sup> Shruti Ambast and Akriti Gaur, 'Who should decide the fee charged by private schools?', *Scroll* (15 January, 2016), accessed < <https://scroll.in/article/801525/who-should-decide-the-fees-charged-by-private-schools> >

<sup>9</sup> Geeta Kingdon, 'Schooling without learning: How the RTE Act destroys private schools and destroys standards in public schools' *The Times of India*, (26 August 2015), accessed < <http://blogs.timesofindia.indiatimes.com/toi-edit-page/schooling-without-learning-how-the-rte-act-destroys-private-schools-and-destroys-standards-in-public-schools/> >.

<sup>10</sup> Divya A., 'Land Ownership Rules: No right to educate for 'illegal' slum schools' *The Indian Express*, (10 May 2015) accessed <http://indianexpress.com/article/cities/delhi/land-ownership-rules-no-right-to-educate-for-illegal-slum-schools/#sthash.JOEncBri.dpuf>.

<sup>11</sup> Anurag Behar, 'The reality of school closures', *Livemint* (18 February 2016), accessed <http://www.livemint.com/Opinion/nd3HbSousJ84BbJtlomlHN/The-reality-of-school-closures.html>.

It has also been recognised that various State Acts need to be harmonised with the RTE Act, as the two often have contradictory provisions. In Delhi, a committee was set up to propose amendments to the Delhi School Education Act, 1973, to bring it in line with the RTE Act.<sup>12</sup> The report of the committee was released in 2012; however, not all of its recommendations have been implemented thus far.

It is, therefore, an opportune time to examine the existing regulatory framework for private schools in India, with a view to identifying common challenges and areas in need of reform. This report examines regulations for private schools in five States and proposes a normative framework for evaluating them. Based on the conclusions drawn from the evaluation, as well as existing international, constitutional and national legal obligations on private schools, it proposes a roadmap for drafting State-level model regulations for private schools.

Part II of the report describes the methodology adopted for this research. Part III describes the relevant international and constitutional obligations, and judgements of the Supreme Court which are applicable to private schools in India. Part IV describes the normative analytical framework used for evaluating regulations of the five selected States. Part V uses the framework to analyse such regulations. Part VI summarises the approach that should be adopted for drafting model regulations for private schools.

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<sup>12</sup> Govt of NCT of Delhi, Directorate of Education, Report of the Review Committee on the Delhi School Education Act and Rules 1973 (January 2012)

## II. METHODOLOGY

For this report, we have studied regulations for private schools in five States. The States have been identified based on the following considerations:

1. Proportion of unaided private schools to the total number of schools in the State<sup>13</sup>
2. Absolute number of unaided private schools in the State<sup>14</sup>

### A. Explanation

Both the proportion and absolute number of unaided private schools differ widely across States. We first ranked the States based on the proportion of unaided private schools. From this ranking, we excluded States where the absolute number of unaided private schools is relatively low (less than 1000). Then we chose five of the top States, which are as follows: Rajasthan, Uttar Pradesh, Haryana, Andhra Pradesh, and Karnataka (Table 1).<sup>15</sup> These States also have a relatively high proportion of children enrolled in unaided private schools.

**Table 1: Private unaided schools and students**

S. No.	State	Proportion of private unaided schools in the State	Proportion of children enrolled in private unaided schools
1.	Rajasthan	32.34%	49.23%
2.	Uttar Pradesh	31.55%	51.37%
3.	Haryana	29.63%	51.67%
4.	Andhra Pradesh	23.68%	42.76%
5.	Karnataka	23.42%	36.25%
	<b>All India</b>	<b>19.38%</b>	<b>31.37%</b>

<sup>13</sup> National University of Educational Planning and Administration, 'School Education in India U-DISE 2015-16', October 2016, accessed <<http://dise.in/Downloads/Publications/Documents/U-DISE-SchoolEducationInIndia-2015-16.pdf>>.

<sup>14</sup> Same as above.

<sup>15</sup> Telangana ranks higher than three of these States but we excluded it as it has the same parent legislation as Andhra Pradesh, and therefore similar regulations for private schools.

## B. Limitations

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1. For studying the regulations in these five States, we have largely relied on State Education Acts and Rules, and State RTE Rules.
2. We have examined executive orders issued by States where they were easily available. However, because of a lack of English-language translations as well as time constraints, it was not possible to examine all the executive orders, notifications and circulars issued by the State Government which have a bearing on unaided private schools.

### III. LEGAL BASES FOR REGULATING PRIVATE SCHOOLS

The basis for regulating private schools must be informed by three legal constraints, namely (i) international commitments; (ii) constitutional obligations; and (iii) judicial decisions on unaided private schools.

#### A. International obligations

India has ratified several international treaties that directly deal with the right to education. The International Covenant on Economic, Social and Cultural Rights (hereafter ‘ICESCR’) enjoins state parties to recognise the fundamental right to education of all people, directing it towards the full development of the human personality and dignity, and strengthening respect for human rights and freedoms. It further enjoins states to provide free and compulsory primary education, and progressively introduce free secondary education.<sup>16</sup> The ICESCR also recognises the right of parents to send their children to schools, other than those run by the state.<sup>17</sup> Further, it affirms the liberty of individuals and bodies of individuals to run their own educational institutions.<sup>18</sup> However, importantly, this liberty is subject to the principles set out in the state’s obligation to realise the right to education, and the requirement that the education in these institutions must conform to the minimum standards laid down by the state.

The content of the right to education as well as the duties of the state in realizing it, are elaborated in General Comment No. 13 (hereafter ‘General Comment’) of the Committee on Economic, Social and Cultural Rights.<sup>19</sup> The right is explained under four components, popularly known as the 4As: availability, accessibility, acceptability and adaptability (see Table 2).

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<sup>16</sup> Articles 13 and 14, ICESCR

<sup>17</sup> Article 13, para 3

<sup>18</sup> Article 13, para 4

<sup>19</sup> General Comment 13: Right to Education (Article 13), E/C.12/1999/10 (available at: <http://www.refworld.org/docid/4538838c22.html>, accessed on 22 October 2016).



**Table 2: General Comment No. 13, ICESCR**

Content of Right to Education	
<b>1. Availability:</b>	<ul style="list-style-type: none"> <li>a. functioning educational institutions and programmes have to be available in sufficient quantity</li> <li>b. While building and sanitation could be regarded as essential, in other contexts even library and playgrounds could be considered so.</li> </ul>
<b>2. Accessibility:</b>	<ul style="list-style-type: none"> <li>a. Non-discrimination: education should be accessible to all, especially vulnerable group without discrimination, in law or in fact.</li> <li>b. Physical accessibility: education should be within safe physical reach either by requiring attendance at reasonably convenient location or through use of technology</li> <li>c. Economic accessibility: Education should be affordable to all. While primary education should be free for all, secondary and higher education should progressively be made free.</li> </ul>
<b>3. Acceptability:</b>	substance of education, form and curricula, and pedagogy should be relevant, culturally appropriate and of good quality.
<b>4. Adaptability:</b>	education should be flexible so it may adapt to the needs of changing societies and communities and should respond to the needs of students within their diverse social and cultural settings.

While the General Comment 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’.<sup>20</sup>

Therefore, the state must ensure *availability* by not closing private schools. Similarly, it may impose obligations on private schools to facilitate equitable access or impose measures to hold these schools accountable to education of acceptable standards.

Apart from the ICESCR, there are other international treaties which place obligations related to the right to education on states. The important treaties are listed below in Table 3.

<sup>20</sup> Para 30, General Comment

**Table 3: Summary of International Obligations on Education**

International Instrument	Year Ratified	Obligations under the right to education
<i>International Covenant on Economic Social and Cultural Rights</i> (ICESCR)	1979	Primary education should be free and compulsory. Secondary education should be made available for all and progressively made free. The rights of parents and guardians to choose appropriate schools for their children (provided they match the minimum standards laid down by the state) should be ensured. General Comment 13 says that the state should ensure availability of functional schools in sufficient numbers, that access to these schools is without discrimination, barrier free and affordable and curriculum and pedagogy are relevant and of good quality. They should be flexible to the changing needs of the society and requirements of children. (Article 13)
<i>Convention on the Rights of the Child</i> (CRC)	1992	The state should progressively realise right to education for all children based on equal opportunity. The school discipline should be ‘administered in a manner consistent with the child’s human dignity’ and in consonance with the convention. (Article 28)
<i>Convention on Elimination of All Forms of Discrimination against Women</i> (CEDAW)	1993	The state should take proactive steps to end discrimination and ensure that out-of-school girls are admitted to schools. It should take active steps in removing stereotyped concepts of gender roles at all levels and forms of education by making necessary changes in curriculum, pedagogy and by encouraging co-educational schools. (Article 10)
<i>Convention on the Rights of Persons with Disabilities</i> (CRPD)	2007	To realise the right to education for persons with disabilities in a non-discriminatory manner, the state should ensure ‘an inclusive education system at all levels’. (Article 24)

In addition to the conventions listed in Table 3, the Jomtein Declaration and Dakar Framework for Action state that basic education must shift its focus from merely enrolment to the quality of learning. The Declaration calls on states to create ‘safe, healthy, inclusive and equitably resourced educational environments conducive to excellence in learning’.

Therefore, 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 As. Specifically, the state has an obligation to ensure compliance with minimum standards of education, and guard against disparities in educational opportunity.

Given the growing number of unaided private schools and increasing enrolment in these, it has been recognised that there is a need to develop guidelines for private actors and their role in providing education, in consonance with human rights law. In this regard, the United Nations Office of High Commissioner of Human Rights has provided detailed guidelines on

the respective obligations of the state and businesses in guaranteeing human rights.<sup>21</sup> While 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.

## B. Constitutional obligations

Under Article 21A, the Indian Constitution empowers Parliament to enact legislation for guaranteeing free and compulsory elementary education to all children between the ages of 6-14 years.<sup>22</sup> Under Article 19(1)(g), private persons are entitled to establish and maintain schools. This right, however, is not absolute and is subject to reasonable restrictions in public interest under Article 19(6). Further, it must be balanced with the contents of Article 21A.

Traditionally, fundamental rights have been held to be enforceable against only the state and its instrumentalities, although there are certain fundamental rights such as Article 17 (prohibition of untouchability) and Article 24 (prohibition of child labour) which apply to private parties as well. However, in several instances of judicial activism, the Supreme Court has held private persons liable for violating fundamental rights, particularly socio-economic rights.<sup>23</sup> By spreading the net of fundamental rights across private citizens and corporations, the Court has adopted the ‘horizontal’ application of rights alongside the traditional state-citizen based ‘vertical’ application.<sup>24</sup>

<sup>21</sup> *Guiding Principles on Business and Human Rights* (2011) available at: [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf) (accessed on 22 October 2016)

<sup>22</sup> Article 21A was added by the 86<sup>th</sup> Amendment to the Constitution. It also requires the government to provide for early childhood care and education (Article 46).

<sup>23</sup> *M.C. Mehta v. Union of India*, (1987) 1 SCC 395 (The Supreme Court allowed the writ petition that sought directions against tanneries releasing effluents in Ganga); *Indian Council for Enviro-Legal Action v. Union of India*, (1996) 3 SCC 212 (Directions were passed against chemical engineering factories located in Bichhri village in Udaipur); *Social Jurist v. Government of NCT of Delhi*, 140 (2007) DLT 698 (Delhi High Court directed that private hospitals given lands at concessional rate (or free) by the government are obligated to provide free treatment to poor patients as per the terms of arrangement)

<sup>24</sup> For a general discussion on horizontal application of fundamental rights in India, see KRISHNASWAMI, SUDHIR, *Horizontal application of fundamental rights and State action in India*, in C. RAJ KUMAR & K. CHOCKALINGAM (ed.) *HUMAN RIGHTS, JUSTICE, AND CONSTITUTIONAL EMPOWERMENT* 47 (2010).

Taking this approach, private schools may be subject to regulations in the interest of protecting and fulfilling the fundamental right to education.

Moreover, the liberal interpretation given by the Supreme Court to fundamental rights has meant that the rights to food and nutrition,<sup>25</sup> health and safety,<sup>26</sup> and sanitation are also part of the right to life.<sup>27</sup> In addition to this, the directive principles enlisted in the Constitution require that employees are provided with just and humane conditions of work, wage-parity, non-discrimination and adequate means of livelihood.<sup>28</sup> The government must ensure that children are provided opportunities to develop in a healthy manner in conditions of freedom and dignity, and are protected against exploitation.<sup>29</sup> Further, the government is required to take effective steps for promoting educational interests of disadvantaged sections, particularly Scheduled Castes and Scheduled Tribes.<sup>30</sup>

Private schools, like any other schools, can be regulated to promote the above-mentioned constitutional objectives. Regulations directed at ensuring provision of adequate infrastructure, facilities for the health and safety of children, equality of access, particularly to promote educational interests of disadvantaged groups, and ensuring that teaching and non-teaching staff is treated in a humane and non-exploitative manner, would all be valid restraints on the autonomy afforded to private schools.

### C. Judicial decisions on unaided private schools

Prior to the enactment of the 86<sup>th</sup> Amendment and the RTE Act, the Supreme Court had interpreted the right to education as part of the fundamental right to life under Article 21.<sup>31</sup> The Court, while outlining the role of private schools in realising the right to education, has traditionally considered education to be a public good and a charitable activity. Over the

<sup>25</sup> *The PUCL vs Union of India and Ors.* 2007 (12) SCC 135.

<sup>26</sup> *Environment & Consumer Protection Foundation v. Delhi administration & Ors.*, Petition (Civil) no. 631 of 2004 dated: 12.03.2012. (Supreme Court of India)

<sup>27</sup> *J.K. Raju v. State of Andhra Pradesh and Anr.*, Contempt Petition (C) No. 532 of 2013 in W.P(C) 631/2004 (Supreme Court of India).

<sup>28</sup> Article 14 and Article 39, Constitution of India.

<sup>29</sup> Article 39(f)

<sup>30</sup> Article 47

<sup>31</sup> *J.P. Unnikrishnan v. State of Andhra Pradesh*, AIR 1993 SC 2178

years, the Supreme Court as well as the High Courts of various Indian States have censured ‘commercialisation of education’,<sup>32</sup> banned the charging of capitation fee<sup>33</sup> and emphasised on the state’s duty to invest in improving educational facilities.<sup>34</sup> 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.<sup>35</sup>

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’.<sup>36</sup>

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*.<sup>37</sup> The provision under Article 12(1)(c) requiring all private schools to reserve 25% of their seats for economically weaker and disadvantaged groups was an important bone of contention here. However, the resulting judgment 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).<sup>38</sup> Consequently, all non-minority private schools are required to adhere to various norms on access and quality laid down in the RTE Act.

Any regulation enacted to govern private schools would have to be in consonance with the principles laid down in these judicial decisions.

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<sup>32</sup> *Modern School v. Union of India*, AIR 2004 SC 2236

<sup>33</sup> *Mohini Jain v. State of Karnataka*, (1992) 3 SCC 666

<sup>34</sup> *K. Krishnamacharyulu v. Sri Venkateswara Hindu College of Engineering*, AIR 1998 SC 295

<sup>35</sup> *The Proprietary High School Trust, Ahmedabad v. State of Gujarat*, AIR 1985 Guj 146

<sup>36</sup> *T.M.A. Pai Foundation v. State of Karnataka*, AIR 2003 SC 355 (Hereafter, *T.M.A. Pai*)

<sup>37</sup> *Society for Unaided Private Schools v. Union of India*, (2012) 6 SCC 102.

<sup>38</sup> A subsequent ruling in 2014 exempted all aided and unaided minority schools from the application of the entire RTE Act.

## IV. ANALYTICAL FRAMEWORK FOR ASSESSING PRIVATE SCHOOL REGULATIONS

In this section, we propose a normative analytical framework to assess existing regulations for private schools in the identified States, with the objective of using the results to inform model regulations that should be used to govern private schools. The first step is to ascertain the objectives behind regulating private schools. The basic principle guiding the objectives should be guaranteeing equal access to quality education for every child. This objective can be further broken down into policy goals that are most likely to promote it.

We take the World Bank SABER-EPS Framework as our starting point for identifying policy goals for private provision of school education, and customising its indicators according to the Indian context.<sup>39</sup> The SABER-EPA, or Systems Approach for Better Education Results - Engaging the Private Sector, Framework is premised on the idea that private educators now contribute significantly to school enrolments in many developing countries, and that there needs to be better interaction between the government and private schools, in the interest of equity and quality. The framework recognizes that merely increasing the allocation of resources to school education is not sufficient to improve outcomes. The effective use of resources depends on proper incentives and accountability mechanisms for the key stakeholders in the sector. Accordingly, the framework identifies four policy goals for engaging the private sector in school education, with the overarching goal of improving accountability and promoting learning for all. The goals, identified on the basis of evidence of high-performing education systems across the world, are listed in Table 4.

Importantly, the SABER framework is cognizant of the criticisms and failures of private education and includes measures that can help overcome them. It addresses common skepticisms about private education, namely (i) it would increase the existing inequalities further, (ii) it connotes abdication of an important function of the government to provide education, and (iii) it would prioritise economic over education interests. The policy goals in the SABER Framework provide an important coordinating role to the government besides creating mechanisms for holding schools accountable and empowering parents and communities to play an important part in decision-making and monitoring. Importantly, the

<sup>39</sup> *What Matters Most for Engaging the Private sector in Education: A Framework Paper* (World Bank, 2014) (available at: [http://wbgfiles.worldbank.org/documents/hdn/ed/saber/supporting\\_doc/Background/EPS/SABER\\_Engaging\\_the\\_Private\\_Sector\\_in\\_Education\\_What\\_Matters\\_Framework\\_Paper.pdf](http://wbgfiles.worldbank.org/documents/hdn/ed/saber/supporting_doc/Background/EPS/SABER_Engaging_the_Private_Sector_in_Education_What_Matters_Framework_Paper.pdf)) (accessed on 22 October 2016) (Hereafter, SABER Paper)

policy goals also seek to mitigate the apprehensions associated with the increasing role of private sector in school education.

**Table 4: SABER policy goals**

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| <ol style="list-style-type: none"> <li>1. <i>Encouraging innovation by providers</i> (local decision-making and fiscal decentralisation, autonomy over managing resources, personnel, and educational content)</li> <li>2. <i>Holding schools accountable</i> (autonomy over process counterbalanced by accountability for outcomes, parameters for quality and access, equally applicable standards for all service providers)</li> <li>3. <i>Empowering all parents, students and communities</i> (informed parents and communities could also act enhance accountability and demand for better quality of education)</li> <li>4. <i>Promoting diversity of supply</i> (by facilitating entry for more diverse set of providers the government could increase responsibility for results)</li> </ol> |
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Critics of the SABER Framework argue that the paper advocates an unsatisfactory approach of dealing with teachers in the name of flexibility. This essentially refers to non-transparent methods of hiring and firing teachers and paying them low salaries to reduce expenditure. Klees and Samoff argue that the paper's preference for the private sector approach of reducing costs through bidding methods and quality assurance does not explicitly restrict profiteering.<sup>40</sup> Some of these concerns can be addressed by considering how the right to education has been explicated under international covenants, and adopting suitable guidelines for private schools to uphold human rights into the regulations.

#### **A. Framing policy goals and indicators for India**

For the purpose of analysing regulations governing private schools in India, we have identified four policy goals, namely:

1. Ease of opening a school;
2. Operational autonomy;
3. Accountability; and
4. Empowering parents and community

While these goals are largely based on the SABER Framework, they have been interpreted and customized according to the Indian context. We have also put forth indicators under

<sup>40</sup> Steven Klees, Joes Samoff (et al ed.), *The World Bank and Education: Critiques and Alternatives*, 77-8 (2012)

each goal which are most relevant for our purpose. The goals and indicators are summarized in Table 5 below. The rationale and interpretation of each goal is discussed in the sub-sections below.

**Table 5: Policy goals and Indicators for India**

Policy goals identified for India	Indicator Heads
Ease of opening schools	<ul style="list-style-type: none"> <li>- Who can open a school</li> <li>- Land ownership and land size norms</li> <li>- Building and infrastructure norms</li> <li>- Associated costs</li> </ul>
Operational autonomy	<ul style="list-style-type: none"> <li>- Selection and salary of employees</li> <li>- Curriculum</li> <li>- Admission procedures</li> <li>- Fees charged</li> </ul>
Accountability and Transparency	<ul style="list-style-type: none"> <li>- Minimum learning standards</li> <li>- Inspections</li> <li>- Grievance redress</li> <li>- Disclosure requirements</li> </ul>
Empowering parents and communities	<ul style="list-style-type: none"> <li>- Information sharing</li> <li>- Parent-teacher associations</li> </ul>

### 1. Ease of opening schools

The SABER Framework proposes that the government should build a regulatory environment conducive to facilitating market entry for a diverse set of private schools. By diverse, it refers to different models of private provision, such as independent private schools, school vouchers and faith-based schools. It relies on evidence that shows greater school choice leads to increased access and better school quality. The indicators under this goal pertain to the requirements and costs associated with registration and certification of schools, as well as availability of public funds for private schools.



In this report, we limit our study to only one model of private provision - unaided private schools. In India, there are elaborate procedures for the establishment and recognition of unaided private schools. These schools are required to acquire multiple licenses and comply with norms under both State and Central laws.<sup>41</sup> Therefore, we identify ease in opening an unaided private school as our first policy goal.

As discussed previously, the availability of schools is one of the key components of the fundamental right to education. The ICESCR requires the state to make functional schools available in sufficient number. While the primary responsibility to do so is borne by the state itself, it must also ensure that regulations governing the entry of private schools are not prohibitive or unreasonable.

Under this policy goal, we put forth indicators on establishment and recognition norms, associated costs, and limits on school location. We assess existing regulations against these indicators to study their reasonableness.

## 2. Operational autonomy

Under the first policy goal in the SABER Framework (encouraging innovation by providers), it is proposed that local decision-making and fiscal decentralisation are required to encourage innovation among schools. It is stated that schools with more autonomy over managerial decisions can adapt to changing student needs and improve education quality. These decisions include control over class size, staff selection, salary levels, delivery of curriculum and managing school budgets.

While encouraging innovation is a valuable goal, developing nations like India are also characterised by widespread income and status-based inequalities. This means that certain restrictions may be placed upon a school's autonomy, such as provisions for affirmative action, in the interest of promoting equitable outcomes. Similarly, regulations may also seek to regulate fee structures of different private schools. It must be reiterated that the ICESCR and General Comment mention 'economic accessibility' as an essential aspect of the right to education. The Indian Supreme Court too has held that profiteering is disallowed and private schools can only make a reasonable surplus.

We accordingly concern ourselves with examining whether existing regulations allow schools sufficient autonomy over their operations, while being mindful of overriding equity concerns. Under this policy goal, we examine regulations governing a school's autonomy

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<sup>41</sup> These are discussed in detail in the next Section.

over raising and allocating funds, hiring of teaching and non-teaching staff, admission of students, choice of class size, and choice of syllabus and text-books. We assess the regulatory interests and objectives served by these regulations, and whether they are exceedingly restrictive in nature.

### 3. Accountability

The SABER Framework notes that if schools are granted autonomy in decision-making, they should be held accountable for educational outcomes. It is discussed that enhanced autonomy should be ‘accompanied by standards and interventions to increase access and improve quality.’ The government can set standards more effectively if there is fair competition and a large number of service providers, which relates back to the policy goal of ‘ease of opening schools.’

Aided private schools in India may be held accountable with financial consequences, as they receive government funds. However, for unaided private schools fixing financial accountability is more difficult. Currently, the reimbursement provided under Section 12(2) of the RTE Act and some special concessions private schools receive whether as part of contractual obligations or existing legislation, are two ways where direct benefits are provided to them by the government. Against these, accountability may be fixed upon these schools to deliver on obligations under the respective contract.

Apart from these, the government has a general obligation to provide assurance for quality learning to all children, for which appropriate accountability mechanisms must be instituted. Cross-state research on charter schools in the United States, for example, suggests that increased accountability is positively associated with student performance.<sup>42</sup> Under this policy goal, we examine whether different types of accountability mechanisms have been set up under present regulations.

There are multiple methods of promoting accountability, ranging from regular inspections to monitoring of learning outcomes through testing. Considering that the right to education is subject to progressive realisation, an accountability mechanism must not be restricted to providing minimum standards; it must also strive for improvement in service delivery. Risk-based inspection, which allows well-performing and continually improving schools to face fewer inspections, is one such approach. It has been adopted by the Office for Standards in

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<sup>42</sup> SABER Paper, 20

Education (Ofsted) in England<sup>43</sup> and the Inspectorate of Education in Netherlands<sup>44</sup> with reasonable success.<sup>45</sup>

There must also be strong and credible grievance redress mechanism so that stakeholders have a direct forum to demand accountability from schools. Further, transparent sharing and proactive disclosure of information with stakeholders has also been linked to enhanced accountability and performance.<sup>46</sup>

#### 4. Empowering parents and communities

Empowering parents and communities not only makes for participatory decision-making at the school level, but also for an effective local system of accountability. The SABER Framework states that when parents have vital information about relative school quality, they are empowered to hold both schools and governments accountable for better quality of education. Moreover, it is noted that for such empowerment to work equitably, the options for parents and students must not depend on wealth status or ability.

In the Indian context, particularly after the 73<sup>rd</sup> and 74<sup>th</sup> Constitutional amendments,<sup>47</sup> there has been an emphasis on empowering local governance. The National Policy on Education, 1986,<sup>48</sup> reiterated the centrality of communities and local governance in ensuring that schools impart quality education. Unaided private schools usually have their own managing

<sup>43</sup> *School Inspection Handbook*, 5 (2016, Ofsted) available at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/553942/School\\_inspection\\_handbook-section\\_5.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/553942/School_inspection_handbook-section_5.pdf) (accessed on 28 October 2016)

<sup>44</sup> The official website of the inspectorate provides detailed methodology of inspection. For risk-based inspection, it uses three kinds of trigger elements, namely (i) signals (complaints and reporting against schools), (ii) accountability documents (schools mandated to produce annual reports on finances and quality) and (iii) student results. For more details, see <https://english.onderwijsinspectie.nl/inspection/the-inspection-process-of-the-dutch-inspectorate-of-education> (accessed on 28 October 2016)

<sup>45</sup> SABER Paper, 21

<sup>46</sup> Anjini Kochar cites studies from United States and India to draw link between teacher accountability and learning outcomes. See, *Holding teachers accountable*, available at

<http://www.livemint.com/Opinion/zkYP84UdNAeQLxGjVwdorO/Holding-teachers-accountable.html> (accessed on 28 October 2016)

<sup>47</sup> The Constitution (Seventy-third Amendment) Act, 1992 available at <http://indiacode.nic.in/coiweb/amend/amend73.htm> (accessed on 23 October 2016); The Constitution (Seventy-fourth Amendment) Act, 1992 available at <http://indiacode.nic.in/coiweb/amend/amend74.htm> (accessed on 23 October 2016)

<sup>48</sup> National Policy on Education, 1986 available at [http://www.ncert.nic.in/oth\\_anoun/npe86.pdf](http://www.ncert.nic.in/oth_anoun/npe86.pdf) (accessed on 23 October 2016)

committees as part of the society or trust establishing them, as well as a parent-teacher association.

Information asymmetry is a serious challenge for holding schools accountable for quality education. Disadvantaged groups not only lack access to information but are also systematically worse off in terms of access to quality education. Overcoming this obstacle requires pro-active measures to build awareness among all parents about their rights and duties, as well as forums for participation and grievance redress.

The indicators under this policy goal include whether participatory decision-making forums involving parents and community are institutionalised, and whether schools are required to create mechanisms for regular communication with parents.

## V. ANALYSIS OF STATE REGULATIONS

We now analyse regulations in Uttar Pradesh, Rajasthan, Karnataka, Haryana and Andhra Pradesh based on the goals and indicators identified in Part IV.<sup>49</sup> Part A provides a general overview of the regulatory framework that operates at the State level. Part B discusses how State regulations fare against the four policy goals (and respective indicators under each) identified in the previous section: (i) ease of opening schools, (ii) operational autonomy, (iii) accountability, and (iv) empowering parents and communities. Part C presents the conclusions from the analysis.

### A. Overview of State regulations

In the five States identified for analysis, we came across different types of laws that govern schools at the State level. For instance, some States have enacted specific legislation on school education<sup>50</sup> and associated Rules.<sup>51</sup> In others, there is different legislation for government and private schools.<sup>52</sup> Additionally, there are Rules under the RTE Act which vary across States. There is also standalone legislation regulating different areas of school operations such as regulation of fee<sup>53</sup> and community participation in school education<sup>54</sup> which applies to unaided private schools. All these laws are further elaborated through executive orders, circulars and notifications passed by the education departments of respective State Governments.

<sup>49</sup> A detailed snapshot of the regulations in each state, assessed against the analytical framework, is included in Annexure 2. However these snapshots feature only the first three policy goals, as the indicators in the fourth goal have been assimilated into the third goal.

<sup>50</sup> Such as the Karnataka Education Act 1983, Haryana School Education Act, 1995.

<sup>51</sup> Karnataka Educational Institutions (Classification and Registration) Rules 1997, Karnataka Educational Institutions (Classification, Regulation and Prescription of Curricula etc.) Rules 1995, Karnataka Educational Institutions (Recognition of Primary and Secondary Schools) Rules 1999, Karnataka Educational Institutions (Certain terms and conditions of service of employees in Private unaided Primary and Secondary and Pre-University educational institutions) Rules, 2005, Karnataka Educational Institutions (Ancillary Services in Recognised Educational Institutions) Rules 2000, Haryana School Education Rules 2003, Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration And Control Of Schools Under Private Managements) Rules, 1993 etc.

<sup>52</sup> Such as the Rajasthan Non-Government Education Act, 1989 and Rules.

<sup>53</sup> In States such as Tamil Nadu.

<sup>54</sup> The Andhra Pradesh School Education (Community Participation) Act, 1998.

The laws contained in State-specific Acts and Rules, along with RTE Rules, can be classified according to three stages in which any unaided private school is subject to control by the state. These are as follows: [1] Establishment and recognition, [2] Operations and day-to-day administration and [3] Withdrawal of recognition and closure of the school

### 1. Establishment and recognition

The law governing this stage generally involves provisions on 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. Further, there are laws which prescribe standards for construction of the school building, safety measures for children, and provisions for hygiene and sanitation, that must be complied with in order to gain recognition. In addition to these, State RTE Rules lay down the time period, manner and conditions for recognition of unaided private schools.

### 2. Operations and administration

The law prescribes the desired qualifications and procedure for appointment of teaching and non-teaching staff and conditions of service. It also contains provisions regulating the role and functions of the head of the school/managing committee, maintenance of financial records, audits and inspections of school accounts, physical inspections by government representatives, mode of maintenance of accounts and procedure for auditing accounts, manner of conducting admissions, charging of fee and other expenses, standards of education, prescription of curriculum and syllabus, textbooks and uniforms, and mechanisms of grievance redress for parents, students and teachers.

In addition to these, State RTE Rules lay down the particulars of admission under Section 12(1)(c) of the RTE Act.

### 3. Withdrawal of recognition and closure

These laws 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.

## B. Analysis of State regulations

### 1. Ease of opening schools

#### ➤ *Who can open a school?*

In India, private persons desirous of opening a school are required to first register themselves as a society or a trust. While some states allow both these options (Karnataka, Rajasthan and Andhra Pradesh), others only allow a society registered under the relevant Societies Registration Act to establish a school (Uttar Pradesh). Under the Uttar Pradesh Societies Registration Act, a group of seven or more persons should submit a memorandum of association containing the details of the name, location, objects and membership of the society, along with the set of rules and regulations that would govern it, to the Registrar of societies in the relevant State. An individual, however, cannot open a school, except in the state of Haryana.

#### ➤ *Land, building and other recognition norms*

A society or a trust, as the case may be, is required to either own the school building or hold it on a long-term lease. The minimum term of lease is 10 years in Uttar Pradesh, and 20 years in Haryana. Some States specify the minimum area of land required to set up a school based on per student area (Uttar Pradesh, Andhra Pradesh), or just provide the minimum area of land that the society needs to own (Rajasthan, Karnataka). Uttar Pradesh, interestingly, stipulates the minimum per student area (9 sq. metres) as well as the size of each classroom (180 sq. metres) as a condition for recognising a school.

Some States also require the promoter society to establish the need for a new school in the neighbourhood by stipulating the number of children and schools in the neighbourhood to be shown to exist (Uttar Pradesh) or for admission of children under Section 12 (1)(c) (Andhra Pradesh). There is also a general requirement for schools to maintain a corpus in the form of National Savings Certificates.

Several State governments have threatened to close down low-fee private schools due to their non-compliance with recognition norms. In one district of Uttar Pradesh, the Department of Basic Shiksha had even decided to impose a penalty of Rs. 1 lakh on each such school.<sup>55</sup> In Karnataka, the education minister threatened to shut down over 1400 such

<sup>55</sup> *Edu Dept orders closure of 'unrecognised' schools*, <http://timesofindia.indiatimes.com/city/bareilly/Edu-dept-orders-closure-of-unrecognised-schools/articleshow/51970214.cms> (accessed on 31 October 2016)

private schools.<sup>56</sup> In Punjab, a study reported that about 1170 private schools had been closed for non-compliance with RTE norms and the process of their de-recognition had already begun.<sup>57</sup> By the Central government's own admission in Parliament, 'Punjab reported closure of 1170 schools, Himachal Pradesh, 4 schools, Madhya Pradesh, 998 schools and Puducherry, 1 school due to failure to maintain norms under the RTE Act.'<sup>58</sup> The National Independent School Alliance (NISA) estimates that there are about 300,000 affordable private schools in India spread across villages, slums, and Tier II and Tier III cities providing access to thousands of children. Over 2,000 schools, reports NISA, have already been closed and about 6,000 have been served closure notices for failing to comply with recognition norms.<sup>59</sup> The vice-president of NISA, Ekta Sodha, says that land-related norms have been the biggest impediment for these schools.<sup>60</sup>

It can be argued that the rationale for these regulations is to ensure that schools are viable and functional educational units. Yet some of these regulations may prove to be prohibitive in practice. Certain regulations, in particular, do not suggest a clear relation with the regulatory interests of the state, and must be reconsidered. For example, in Uttar Pradesh, all private schools are required to have their buildings painted white (and re-painted every two years). In Haryana, all private schools are required to have a veranda in every classroom. Further, the changes in demography and density of urban land spaces in India,<sup>61</sup> and the need for more schools for universalisation of elementary education require regulations to be more flexible and accommodative.<sup>62</sup>

<sup>56</sup> Karnataka Minister wants to shut 1400 schools, <http://www.deccanchronicle.com/141030/nation-current-affairs/article/karnataka-minister-wants-shut-1400-schools> (accessed on 31 October 2016)

<sup>57</sup> Pvt schools are not following RTE norms <http://www.tribuneindia.com/news/punjab/pvt-schools-not-following-rte-norms-finds-study/45951.html> (accessed on 31 October 2016)

<sup>58</sup> <http://164.100.47.192/loksabha/Questions/QResult15.aspx?qref=21663&lsno=16>

<sup>59</sup> See, <http://nisaindia.org/media/indias-best-budget-private-schools> (accessed on 31 October 2016)

<sup>60</sup> We interviewed Ms. Ekta Sodha about the challenges faced by the affordable private schools due to the regulations governing them on 10 May 2016.

<sup>61</sup> Recently, the education department of Karnataka government modified regulations for newly opened schools in Bangalore. It brought the minimum required land area to half acre, instead of one acre for the rest of the State. However, private schools still viewed this notification with apprehension contending that it was not possible for the old schools to find half acre of space. See <http://timesofindia.indiatimes.com/city/bengaluru/Half-acre-is-enough-to-run-a-school-Govt/articleshow/47156067.cms> (accessed on 31 October 2016)

<sup>62</sup> The Shailaja Chandra Committee report, in 2012, noted that there were about 1600 unrecognised schools in Delhi with about 1.64 lakh children on their rolls. Most of these schools were not recognised because they do



## 2. Operational autonomy

### ➤ *Staff selection*

Data from the United Nations reveals that India faces a shortage of teachers in excess of 350,000.<sup>63</sup> Further, it estimates that by 2030, India would need over 3 million teachers to educate all children attending primary classes. While employing qualified and competent teachers is critical for quality education, this goal can only be realized progressively. In such a context, regulations on hiring norms must set minimum standards but also allow room for progressive realization. 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. Considering the resource crisis in which most low-fee private schools operate, such regulations may force them into non-compliance.

### ➤ *Fee and admission-related regulations*

There are several regulations governing the admission process in private schools. An important condition here is Section 12(1)(c) of the RTE Act and similar contractual obligations in lieu of allotment of land at concessional rates.<sup>64</sup> The RTE Act prohibits schools from employing screening procedures of any kind in the selection of students.<sup>65</sup> These may be viewed as necessary requirements in the interest of equity.

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not fulfil recognition criteria such as land ownership or minimum land area requirements and teachers' salaries (See, *Land Ownership Rules: No right to educate for 'illegal' slum schools*, The Indian Express, May 10, 2015 available at: <http://indianexpress.com/article/cities/delhi/land-ownership-rules-no-right-to-educate-for-illegal-slum-schools/>. Geeta Kingdon notes that the available evidence suggests that the 'true size of the private schooling sector is greatly underestimated in official data due to enumerating only recognised schools.' See, Geeta Kingdon, *The progress of school education in India*, available at <http://www.gprg.org/pubs/workingpapers/pdfs/gprg-wps-071.pdf> (accessed on 1 December 2016)

<sup>63</sup> Where are the worst teacher shortages? Available at <https://www.weforum.org/agenda/2015/12/where-are-the-worst-teacher-shortages/> (accessed on 31 October 2016)

<sup>64</sup> For example, Rule 134-A, Haryana Education Rules, 2003 require private schools built on the land belonging to Haryana Urban Development Authority to reserve additional 10% seats for children belonging to economically weaker sections. (For its implementation mechanism, see Memo No. 8/27-2013 PS(3), available at: [http://schooleducationharyana.gov.in/downloads\\_pdf/circullers/134A\\_31032015.pdf](http://schooleducationharyana.gov.in/downloads_pdf/circullers/134A_31032015.pdf)

<sup>65</sup> Section 13, RTE Act

State regulations also provide a fixed window for the admission cycle and academic sessions in private schools. Additionally, 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. When it comes to curriculum, private schools enjoy limited operational autonomy.<sup>66</sup>

Schools have larger latitude with respect to deciding their fee-structure, although they are prohibited from charging capitation fee under the RTE Act.<sup>67</sup> Schools are required to maintain transparency and fairness when charging fee (Karnataka)<sup>68</sup> and disclose the amount before the beginning of an academic year to the authority designated by law (Haryana, Uttar Pradesh, Andhra Pradesh, and Karnataka). However, States such as Uttar Pradesh also have more stringent regulations. Schools are prohibited from raising their fee by more than 10% in the interval of three years. Rajasthan had earlier enacted a law which established a committee to prescribe and regulate fee.<sup>69</sup> However, the legal validity of this law was contested, forcing reconsideration of this statute.

A case for more flexibility might be made, depending on how these regulations operate in practice and whether they interfere with the school's ability to produce learning outcomes of a minimum standard.

### 3. Accountability

#### ➤ *Assessment of school performance*

It is frequently argued that the RTE Act has failed to improve learning outcomes in India.<sup>70</sup> A common criticism is that the RTE Act does not specify minimum learning standards;

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<sup>66</sup> The RTE Act provides for a National Framework Curriculum to be formulated by National Council for Education Research and Training (NCERT). At the State level, State Councils prescribe the curriculum. Therefore, private schools have very limited autonomy in that aspect. Certain States like Andhra Pradesh also prescribe the medium of instructions where (in Andhra Pradesh, Telugu should be either be the first or the second language to be taught in schools).

<sup>67</sup> Ibid.

<sup>68</sup> The relevant Karnataka Rules say that the procedure for collecting fee should 'open, transparent and accountable'. They also specify some norms for different types of fee.

<sup>69</sup> Rajasthan Schools (Regulation of Collection of Fee) Act, 2013.

<sup>70</sup> Prashant K. Nanda, 'RTE fails to lift learning outcomes', *Livemint*, (17 January 2012), accessed <<http://www.livemint.com/Home-Page/PAhuhjz3nyCeqhDRMfcfIK/RTE-fails-to-lift-learning-outcomes.html>>

instead it sets out input requirements for schools.<sup>71</sup> Our analysis of five States reveals that State regulations also do not specify minimum learning outcomes, nor do they provide for standardised assessments to measure learning. However, schools may be held accountable for student learning in indirect ways. For instance, in Haryana, ‘satisfactory exam results’ are a pre-condition for permanent recognition. However, it is not specified what ‘satisfactory’ means. In Andhra Pradesh, schools are directed to undertake child tracking, which involves maintaining records of the child’s attendance and learning achievements. It is not known whether these provisions have a positive impact on the quality of learning. Uttar Pradesh has introduced an inspection system for schools managed by the government’s Basic Shiksha Parishad, which is remarkable in its coverage and depth. It involves periodic grading of schools based on physical infrastructure, enrolment and attendance, learning achievements of students and stakeholder participation, with special attention paid to the schools managing low scores. On paper, this system appears to have great potential for instituting accountability towards learning outcomes. There is, as such, no legal constraint in implementing a similar system for private schools if the RTE Act and judicial precedents are considered.

The remaining States have a provision for inspection, where government officials verify the school’s adherence to recognition norms. As recognition norms largely pertain to infrastructure and teacher qualifications, the quality of learning is not subject to assessment (except in the instances discussed above). Further, no State fixes the minimum number of inspections or minimum period within which an inspection must be conducted for a school. Haryana and Karnataka use a punitive approach, where poor performance on inspection invokes penalties. It is important for accountability mechanisms to be facilitative and not merely punitive. The goal of accountability is ultimately linked to improving the quality of education. The mechanisms should allow for constructive interventions when a school does not perform on the established parameters - something which is not found in the present regulations.

### ➤ *Forums for stakeholders*

The RTE Act provides for a grievance redressal mechanism for teachers. However, the RTE Rules in two States clarify that this is only available to teachers of government and government-aided schools. Karnataka is the only State which has a comprehensive

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<sup>71</sup> Geeta Kingdon, ‘Schooling without learning: How the RTE Act destroys private schools and destroys standards in public schools’ *The Times of India*, (26 August 2015), accessed < <http://blogs.timesofindia.indiatimes.com/toi-edit-page/schooling-without-learning-how-the-rte-act-destroys-private-schools-and-destroys-standards-in-public-schools/> >

mechanism of grievance redressal for teachers, parents and students; Andhra Pradesh has one for parents and students, but not teachers. For schools to be accountable to students and parents, it is important that there are structures where they can regularly voice their concerns. Forums of grievance redress should be present and easily accessible to all stakeholders.

#### 4. Empowering parents and communities

Our review of State regulations indicates a scattered approach towards this policy goal. The two main aspects of empowerment identified in our framework are information-sharing and participation. Regulations in Haryana and Karnataka provide for some information to be relayed to parents, such as proposed fee, progress reports, and medical reports of their wards. In Rajasthan, it is compulsory for private schools to display the list of students selected for admission under Section 12(1)(c) of the RTE Act on the notice board or the school website. However, State regulations do not suggest a principled approach towards keeping parents informed, nor towards generating awareness of welfare measures among disadvantaged communities.

The involvement or participation of parents in the school's activities is provided for in some laws. Notably, Karnataka requires the PTA to redress grievances of students and parents, devise programmes for better relations between all the stakeholders, and provide for student welfare.

Here, Andhra Pradesh was found to be an exception. It has a separate legislation which deals with community participation in school education. This law directs all schools to set up two separate bodies - a PTA and a School Committee. Both bodies comprise teachers and parents. The law stipulates that both bodies should meet at least twice in a year. The law also vests both bodies with different sets of powers and functions.

There is a clear lack of uniformity in the way the role of PTAs has been envisioned in different States. While different States have enacted their own Panchayati Raj Acts, very few Panchayati Raj institutions are linked with the functioning of schools in the area. For instance, in most cases, they are largely concerned with constructing and maintaining government school buildings.<sup>72</sup> Admittedly, bringing PTAs of unaided private schools under the control of a local elected body may affect the autonomy granted to private schools. A way in which the question of autonomy and accountability can be balanced is by making the role of local elected bodies recommendatory and not binding. At the same time, issues such

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<sup>72</sup> Govinda and Bandyopadhyay, p.11.

as elections to PTAs, meetings, disclosure of information to parents, delineation of powers and functions of members of PTAs, involvement of parents in making key decisions are aspects which the law must necessarily capture.

## VI. NOTE ON MODEL REGULATIONS FOR PRIVATE SCHOOLS

Our examination of regulations in five States reveals that private schools are regulated by a mix of RTE Rules, State Acts, executive orders, notifications and circulars. It is seen that these different instruments are often in dissonance with each other. In Haryana, for instance, there are two separate provisions which require private schools to reserve seats for children from economically weaker sections, with both provisions specifying a different proportion of seats to be reserved. One is Section 12(1)(c) of the RTE Act, and the other is Rule 134-A of the Haryana School Education Rules, 2003. The existence of these dual requirements has not found favour with private schools in the State.<sup>73</sup> Moreover, the multiplicity of instruments and the varying times at which they have been enacted means that there are no coherent policy objectives driving the regulation of private schools. Further, there are aspects of private school operations which are still unregulated in many States, such as fee.

In order to make progress on universalising access to school education, as well as improving the quality of learning in India, it is important to have a harmonised set of regulations governing private schools. These regulations must be consistent with the legal bases discussed in Part II of the report - international covenants, Constitution, judicial decisions and the RTE Act. Further, they should be informed by clearly identified policy goals.

We recommend that these regulations take the form of a State-level law, which encompasses all aspects of private school operations. The content of the law should be guided by the four policy goals of the analytical framework used in the report. It should also incorporate current best practices in different States. Accordingly, it should facilitate the opening of new schools with minimum restrictions, provide a reasonable measure of autonomy to schools with respect to management decisions, establish clear learning standards and set up accountability mechanisms, as well as set up structures to empower parents and communities. This law will co-exist with the State RTE Rules, and replace/harmonise previous State level Education Acts, executive orders, notifications and circulars pertaining to unaided private schools.

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<sup>73</sup> 'Private schools go on strike', *The Tribune*, (7 May 2016), accessed < <http://www.tribuneindia.com/news/haryana/private-schools-go-on-strike/232976.html>>

With this Report, we hope to initiate discussion on creating a model State law for private schools. A preliminary table of contents for such a law is attached in Annexure 1.

## VII. ANNEXURES

### A. Table of contents for Model Regulations

(Draft)

#### I. *Establishment and Recognition*

- a. Eligibility
  - Society/trust
  - Ownership of land
- b. Establishment procedure with identified authorities
- c. Conditions for Recognition
  - Minimum standards for infrastructure and safety (defined flexibly)
  - Financial viability
- d. Withdrawal
  - Conditions for withdrawal of recognition
  - Graded sanctions/interventions
- e. Closure/takeover
  - Graded sanctions/interventions

#### II. *Operations*

- a. Recruitment of teaching and non-teaching staff
- b. Salaries and service conditions
- c. Admission
- d. Fee
- e. Reservation policies
- f. Minimum standards of learning (curriculum, PTR, courses, activities etc.)
- g. Internal governance (managing committee, head of school, delineation of roles)
- h. Maintenance of records (financial, student records, others)

#### III. *Accountability Mechanisms*



- a. Inspection/school assessment
  - Provision for targeted inspection
  - Provision for grading schools
- b. Dissemination of information to relevant stakeholders (by the government and by the school)
- c. Grievance redressal procedures for relevant stakeholders

*IV. Parents and Communities*

- a. PTA composition, powers, functions

## B. State Snapshots

## ANDHRA PRADESH

	POLICY GOAL INDICATORS	ANSWER (YES/NO)	COMMENT	LEGAL PROVISION
1 - Ease of Opening Schools				
1.1	Is there no restriction on who can open a school?	Yes	Should either be society registered under Societies Registration Act, 1860 or a registered public trust	Rule, 14, A.P. RTE Rules
1.2	Is there no restriction on the ownership of land required to open a school?	NA		
1.3	Are there different land norms for different types of schools?	Yes	Some variations on neighbourhood requirement and government assistance for providing access to facilities, depending on terrain, small/big hamlets, density of population	R. 5(3) - R. 5(5), A.P. RTE Rules.
1.4	Are there no conditions for recognition which may be regarded as stringent/prohibitive? If no, please specify	NA		
	Minimum standards for land	6-8 sq. ft. per student. Also, there are requirements with respect to play area depending upon enrolment.		Rule 5, Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration and Control of Schools under Private Managements) - Rules, 1993
	Minimum standards for school building	Building should follow National Building Code.		Same

	Minimum standards for classrooms	6-8 sq. ft. per student. Area to be calculated section-wise.	Same	
	Quantum of fee	Rs. 1000 application fee and Rs. 25000 in National Savings Certificate	Rule 5(1), 6.	
2 - Operational Autonomy				
2.1	Can the school decide the qualifications of its teachers and staff?	No	Qualifications as provided under RTE Act	Provided under the recognition/self-declaration form to be filed by the schools.
2.2	Can the school decide the salary of its teachers and staff?	Yes	To be decided by school management subject to legislations and regulations in force.	Rule 21, A.P. RTE Rules. Rule 17(3) of Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration and Control of Schools under Private Managements) - Rules, 1993 says that 50% of total revenue from fee must be spent on salaries of staff.
2.3	Can the school select its teachers and staff without government involvement?	Yes	However, all appointments are subject to approval.	The Educational Agency shall be free to appoint employee /staff to an un aided post as per subject requirement, provided they have the prescribed qualification to hold the posts. The service conditions of un aided teaching and non-teaching staff shall be contractual in nature between the educational agency concerned and the appointee. (Rule 12(7), 1993 rules)
2.4	Can the school dismiss its teachers and staff without government involvement?	Yes		Same
2.5	Can the school choose the medium of instruction, textbooks, co-curricular activities, games and physical activities?	NA		
2.6	Can the school decide its own admission procedure?	Yes		

2.7	Can the school decide the quantum of tuition fee to be charged from students?	Yes	However, how the fee should be utilized is prescribed.	Rule 18(4), 1993 Rules.
<b>3 - Accountability and Transparency</b>				
3.1	Is there any provision for minimum learning standards?	Yes	Child should be given a unique id to help monitor attendance and learning achievements.	Rule 7, A.P. RTE Rules.
3.2	Is there any provision for inspections?	Yes	That schools should be open for inspection is a condition for recognition.	R.17(4)(d) A.P. RTE Rules
3.3	Is there any penalty if the school does not meet inspection standards?	NA	If infrastructure norms are not met, the provisional recognition could be withdrawn.	A.P. RTE Rules
3.4	Is there any provision of grievance redress for teachers, parents and students?	Yes	For parents and children, Gram Panchayat	A.P. RTE Rules (Amendment), 2011
3.5	Is there any provision for the school to disclose information to the government?	Yes	Schools are required to disclose fee to the government at the commencement of academic year to District Education Officer.	Part of recognition norms under R.14, A.P. RTE rules.
3.6	Is there any provision for providing information about the school to parents and other stakeholders?	NA		
3.7	Is there any provision for a PTA?	Yes	Each school is required to constitute a PTA and School committee comprising of all teachers and parents and are required to meet at least twice a year.	A.P. School Education (Community Participation) Act, 1998

## HARYANA

	POLICY GOAL INDICATORS	ANSWER (YES/NO)	COMMENT	LEGAL PROVISION
<b>1 - Ease of Opening Schools</b>				
1.1	Is there no restriction on who can open a school?	Yes	Anyone can open a school, including an individual, group of individuals, firm of society.	Rule 30(1)(a)(i), 2003 Rules: <i>An individual or association of individuals or firm or society registered under the Societies Registration Act, 1860 (21 of 1860), or trust created under the Indian Trusts Act, 1882 (2 of 1882), or company registered under the Companies Act, 1956</i>
1.2	Is there no restriction on the ownership/tenancy of land required to open a school?	No	For a school built on rented land, the lease deed must be valid for at least 20 years.	Rule 30(1)(b)(i), 2003 Rules: <i>A private school can be run in a rented building/ land on lease hold basis with a minimum period of twenty years irrevocable lease deed provided such school fulfills the norms of land and building as specified under these rules</i>
1.3	Are there different land norms for different types of schools?	Yes	Norms vary depending on level of school (primary, middle), and also according to whether they were established before or after the 2003 Haryana Rules	
1.4	Are there no conditions for recognition which may be regarded as stringent/prohibitive? If no, please specify	No	There are some very stringent conditions, such as the requirement to have a veranda in every classroom	Rule 30(1)(b)(ii)(d), 2003 Rules: <i>veranda</i>  <i>There shall be veranda with every class room: 8 feet in width for single loaded; 10 feet in width for double loaded;</i>

	Minimum standards for land size	<p>Minimum land size is provided for schools, varied by level and time of establishment. However the appropriate authority may reduce the size up to ten percent</p>	<p>Under Rule 30(1)(b)(i), 2003 Rules,</p> <ul style="list-style-type: none"> <li>• The minimum land size is provided for schools established after 2003, varied by school level. For primary schools, it is 0.5 acres.</li> <li>• For schools established before 2003, the minimum norms are different, and varied by both school level and number of storeys in the school building. Here, for a primary school single storey building, it is 500 sq m.</li> <li>• It is also specified that schools have to provide or make an arrangement for 'adequate playground within the radius of 500 meter according to the number of students'.</li> <li>• The ratio for covered to open area is provided as 35:65</li> </ul> <p>Under the Haryana RTE Rules,</p> <ul style="list-style-type: none"> <li>• For schools set up before RTE Rules, 2011, no land size is specified as long as land is provided for 'building and playground' (Appendix 1 (1), RTE Rules 2011)</li> <li>• For schools set up after RTE Rules, land size is provided, varied by school level and whether the school is in a municipal or rural area. For a primary school, it is 0.5 acres in both. For a middle school, it is 0.5 acres in a municipal area and 1 acre in a</li> </ul>
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			rural area. (Appendix 2(1) and (2), RTE Rules 2011)
	Minimum standards for school building	<p>Norms for classroom size, number of classrooms, types of rooms, staircases and other building facilities are provided as conditions for recognition.</p> <p>However the appropriate authority may relax the building size by up to ten percent and allow for other 'minor variations' which don't affect the health and safety of students and staff</p>	Rule 30(1)(b)(ii), 2003 Rules
	Minimum standards for classrooms	See above	
	Quantum of fee	The Rules provide for processing fee and pledge funds for the purpose of recognition, varied by the school level.	<p>Under Rule 31(1), the processing fee for a primary school is Rs. 1000.</p> <p>Under Rule 30(2), the pledge funds for a primary school are Rs. 50,000.</p>
<b>2 - Operational Autonomy</b>			
2.1	Can the school decide the qualifications of its teachers and staff?	No	<p>There are minimum qualifications set by the government under the 2003 Haryana Rules, in addition to the qualifications set under the RTE</p> <p>Appendix A, 2003 Rules (unavailable)</p>
2.2	Can the school decide the salary of its teachers and staff?	No	<p>Rule 29(2)(g), 2003 Rules: <i>The salary of staff so notified shall not be less than minimum wage policy of the state, if 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</i></p>

2.3	Can the school select its teachers and staff without government involvement?	Yes	Nothing to the contrary is provided in the Rules.	Under 32(2)(f), 2003 Rules, the school's Managing Committee is in charge of appointments, disciplinary action and control over staff.
2.4	Can the school dismiss its teachers and staff without government involvement?	Yes	Same as above	See above
2.5	Can the school choose the medium of instruction, curriculum, textbooks, co-curricular activities, games and physical activities?	No	The school can choose all of these except curriculum, which is decided by the government's Curriculum Committee and the Board to which the school is affiliated	Under Rule 5, 2003 Rules, Hindi is to be the preferred medium of instruction  Under Rule 6, 2003 Rules, the three language formula is to be followed from classes VI-VIII  (Also refer to Rules 9, 10, 17 and 18)
2.6	Can the school decide its own admission procedure?	No	Admission norms are provided in the Rules	Under chapter VI A, 2003 Rules, <ul style="list-style-type: none"> <li>• Children between 3-5 to be admitted in pre-primary</li> <li>• Minimum age for primary is 5 years</li> <li>• No test, no discrimination (exceptions for minority schools)</li> <li>• 134(A) - Reservation for meritorious poor students</li> </ul> <p>Additionally, under the RTE Rules, the school has to reserve 25% seats for EWS and DG children.</p>
2.7	Can the school decide the quantum of tuition fee to be charged from students?	Yes	However, the school has to submit details of the fee charged to the government every year	Under chapter VI C, 2003 Rules, <ul style="list-style-type: none"> <li>• Fee to be notified</li> <li>• Manager to submit details to department every year</li> <li>• No fee to be charged before academic session starts</li> </ul>



				<ul style="list-style-type: none"> <li>• Admission fee to be charged only in certain classes</li> <li>• Receipt to be provided</li> </ul>
<b>3 - Accountability and Transparency</b>				
3.1	Is there any provision for minimum learning standards?	No	Nothing of this sort is provided in the Rules.	
3.2	Is there any provision for inspections?	Yes		<p>Under Rule 187, 2003 Rules,</p> <ul style="list-style-type: none"> <li>• Director will authorise some officer to carry out inspection</li> <li>• Surprise inspections can also be carried out</li> <li>• Academic work, library, games, co-curricular, school plant, discipline, observation of rules and regulations</li> </ul>
3.3	Is there any penalty if the school does not meet inspection standards?	Yes		<p>Under Rules 189, 190 and 191, 2003 Rules, the Director can ask the school to correct deficiencies found at the time of inspection. If the school's Managing Committee doesn't comply with the directions, the Director can take any action deemed fit, including withdrawal of recognition.</p>
3.4	Is there any provision of grievance redress for teachers, parents and students?	No	Only for teachers, to be notified under the RTE Rules	Notification not available
3.5	Is there any provision for the school to disclose information to the government?	Yes	Schools are required to maintain records and the government may inspect these. However, the regularity	<ul style="list-style-type: none"> <li>• Under Rule 30(1)(a)(xxvi), 2003 Rules, schools have to submit information and reports as required by the Director/appropriate authority</li> </ul>

			of these inspections is not specified.	<ul style="list-style-type: none"> <li>Under Rule 28, all the records to be maintained by a school are listed. These include cash book, admission, attendance, fee and funds and exam results. All these records are open to inspection by the Director or officers authorities by him/her.</li> </ul>
3.6	Is there any provision for providing information about the school to parents and other stakeholders?	Yes		Under Rule 32(2)(1), 2003 Rules, the school should send regular progress reports and medical reports of the child to his/her parent or guardian
3.7	Is there any provision for a PTA?	No		

## KARNATAKA

	POLICY GOAL INDICATORS	ANSWER (YES/NO)	COMMENT	LEGAL PROVISION
<b>1 - Ease of Opening Schools</b>				
1.1	Is there no restriction on who can open a school?	No	Those who want to open a school must first be registered as a society or trust.	Procedure and requirements relating to establishment and recognition of schools have been laid down in the Karnataka Educational Institutions (Classification and Recognition) Rules, 1997 [ hereafter '1997 Rules']
1.2	Is there no restriction on the ownership of land required to open a school?	No		
1.3	Are there different land norms for different types of schools?	No	Norms differ for different areas in which the proposed school is to be set up.	Evidence of ownership of land required for registration. Clause 10(d) of Form I as prescribed in the Karnataka Educational Institutions (Classification and Registration) Rules 1997 “photo copy of title deeds to evidence possession of the extent of land required for building, playground, etc., of the prescribed standards.” Moreover, a circular was issued in 2014 by the Department of Education, Government of Karnataka which makes evidence of land ownership (or agreement of the lease period) mandatory for registration and recognitions. [.]

1.4	Are there no conditions for recognition which may be regarded as stringent/prohibitive? If no, please specify	No	For eg: - carpet area for each student of not less than six square feet	Conditions for recognition have been laid down in Rule 4 and 5 of the Karnataka Educational Institutions (Classification, Regulation and Prescription of Curricula Etc.,) Rules, 1995 [hereafter '1995 Rules']
	Minimum standards for land		Managements planning to open private schools should own a minimum of two acres of land in rural areas, one-and-half acres in town municipality and panchayat jurisdictions, and at least one acre in the corporation area.	Through an executive circular. Sourced from <a href="http://www.thehindu.com/news/national/karnataka/government-sets-guidelines-for-opening-private-schools/article6633795.ece">http://www.thehindu.com/news/national/karnataka/government-sets-guidelines-for-opening-private-schools/article6633795.ece</a> ) Circular not available.
	Minimum standards for school building		Not quantified but specified in terms of factors to be kept in mind for constructing a building.	Provided in Rule 4 and 5 of the 1995 Rules
	Minimum standards for classrooms		Specific classroom size prescribed	As per a Government circular - Schools must mandatorily have at least 5 classrooms for primary sections, 8 for higher primary and 9 for high schools - all measuring 18ftx20ft [ <a href="http://www.thehindu.com/news/national/karnataka/government-sets-guidelines-for-opening-private-schools/article6633795.ece">http://www.thehindu.com/news/national/karnataka/government-sets-guidelines-for-opening-private-schools/article6633795.ece</a> )]
	Quantum of fee		Endowment fund, registration fee for different categories of schools provided.	<i>Endowment fund</i> - Rs. 1 lakh is the minimum endowment amount for primary schools, Rs. 2 lakhs for Kannada-medium higher primary schools, Rs. 5 lakhs for English primary schools, Rs. 3 lakhs for higher primary schools and Rs. 10 lakhs for English-medium higher primary schools

				<p><i>Registration and processing fees for schools -</i>  Rs. 25,000 for pre-primary with Rs. 10,000 processing fee; Rs. 50,000 for Kannada schools that run classes 6 to 8, with processing fee of Rs. 20,000; Rs. 2 lakhs for English-medium schools that run classes 6-8, with processing fee of Rs. 20,000; Rs. 50,000 for Kannada schools that run classes 9 and 10, with processing fee of Rs. 20,000; classes 9 &amp; 10, with processing fee of Rs. 20,000  (Circular not available from Karnataka Education Department website, figures cited from the Hindu, dated November 26, 2014  <a href="http://www.thehindu.com/news/national/karnataka/government-sets-guidelines-for-opening-private-schools/article6633795.ece">http://www.thehindu.com/news/national/karnataka/government-sets-guidelines-for-opening-private-schools/article6633795.ece</a>)</p>
<b>2 - Operational Autonomy</b>				
2.1	Can the school decide the qualifications of its teachers and staff?	No		As per Rule 9 of the 1995 Rules - - The institution shall appoint only qualified teachers and other staff as specified in the recruitment rules notified by the State Government or other authority.
2.2	Can the school decide the salary of its teachers and staff?	No		As per Rule 3(1)(b) of Karnataka Educational Institutions (Certain terms and conditions of service of employees in Private unaided Primary and Secondary and Pre-University educational institutions) Rules, 2005 [hereafter '2005 Rules'] - Salary - to not be less than the minimum of the basic of the scale of pay of the corresponding post held by an

				employee in a Government educational institution and shall be disbursed through A/c payee cheques drawn in favour of such employee.
2.3	Can the school select its teachers and staff without government involvement?	Yes	But appointment and selection is based on staff pattern as specified by the State Government	Rules 3 of 2005 Rules
2.4	Can the school dismiss its teachers and staff without government involvement?	Yes	The law does not mention a clear procedure for dismissal of teachers. However, it requires the school to follow due procedure in tending to a resignation letter of an employee	Rule 6 of 2005 Rules
2.5	Can the school choose the medium of instruction, curriculum, textbooks, co-curricular activities, games and physical activities?	No	For instance, schools can choose only medium specified by the State Government. However, schools have some freedom to choose co-curricular activities and other physical activities.	Prescription of curricula Rule 19 of the 1995 Rules
2.6	Can the school decide its own admission procedure?	No	Schools are required to follow the admission procedure as laid down in law	Rule 13 of the 1995 Rules
2.7	Can the school decide the quantum of tuition fee to be charged from students?	Yes	However, the fee so charged must be decided in transparent, accountable and fair manner as specified in law.	Rule 10 of the 1995 Rules Fee should not be varied to the disadvantage of parents and students in the middle of the academic year. The detail of the fee specified should be sent to the Departmental Authorities for information. Other specifications for accounting the fee collected under different items and the manner of

				collection has been specified under Rules 10(6), 10(7), 10(8) and 10(9)
<b>3 - Accountability and Transparency</b>				
3.1	Is there any provision for minimum learning standards?	No		
3.2	Is there any provision for inspections?	Yes		Detailed provisions for inspection of schools have been provided in Provided in Section 57 of the Karnataka Education Act, 1983
3.3	Is there any penalty if the school does not meet inspection standards?	Yes		Section 57 of the Karnataka Education Act, 1983 provides authority to the State Government to obtain necessary information such as books, accounts, documents, securities, cash and other properties belonging to or in the custody of the Governing Council. Additionally, the Government or competent authority can provide directions to the schools to comply with its orders and may take action if such directions are not complied with.
3.4	Is there any provision of grievance redress for teachers, parents and students?	Yes		Rule 15 of the 1995 Rules District Level Education Regulating Authority provided in Rule 16 of the 1995 Rules
3.5	Is there any provision for the school to disclose information to the government?	Yes		Same as the laws on inspection and disclosure provided in Section 57 and 58 of the Karnataka Education Act, 1983
3.6	Is there any provision for providing information about the school to parents and other stakeholders?	Yes	Such as the admission procedure, selected students, proposed fee, relevant updates of the school etc.	Laws on admission, regulation of fee etc. as provided in the 1995 Rules.

3.7	Is there any provision for a PTA?	Yes	The PTA is also involved in important decision-making functions. E.g. Redress grievances of students and parents, devise programmes for a healthy student-teacher/parent-teacher/management-parent/management- teacher relations, student welfare.	Rule 12 of the 1995 Rules.
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## RAJASTHAN

	POLICY GOAL INDICATORS	ANSWER (YES/NO)	COMMENT	LEGAL PROVISION
<b>1 - Ease of Opening Schools</b>				
1.1	Is there no restriction on who can open a school?	No	The school must be run by a registered society or trust	Under Section 3, 1989 Act, the school must be registered under the Rajasthan Societies Registrations Act 1958, or be run by a public trust registered under the Rajasthan Public Trusts Act 1959 or a trust created under the Indian Trusts Act 1882.
1.2	Is there no restriction on the ownership of land required to open a school?		Not specified in Act or Rules	
1.3	Are there different land norms for different types of schools?	Yes	There are different norms for schools in urban and rural areas	3, Appendix 2, 1993 Rules
1.4	Are there no conditions for recognition which may be regarded as stringent/prohibitive? If no, please specify	No	Building norms and norms for furniture and learning material are very specific	6, Appendix 2, 1993 Rules
	Minimum standards for land	Minimum land size is provided, varied by school level and rural/urban location		Under 3, Appendix 2, 1993 Rules, land size for a primary school in rural areas is 1 acre and in urban areas, 200 sq meter playground
	Minimum standards for school building	Classroom size and other building norms are provided, varied by school level		Under 2, Appendix 2, 1993 Rules
	Minimum standards for classrooms			
	Quantum of fee	Reserved fund and recognition fee are provided, varied by school level		The reserved fund for a primary school is Rs. 50,000 (4, Appendix 2, 1993 Rules) and

				the recognition fee is Rs. 250 (13, Appendix 2, 1993 Rules)
<b>2 - Operational Autonomy</b>				
2.1	Can the school decide the qualifications of its teachers and staff?	No	Under the 1993 Rules, the qualifications for corresponding state government will apply. Additionally, minimum qualifications are now specified under RTE	Rule 26(b), 1993 Rules
2.2	Can the school decide the salary of its teachers and staff?	No	Salary norms are specified in the Rules	<ul style="list-style-type: none"> <li>Salary norms to be according to government rules (14, Appendix 2, 1993 Rules)</li> <li>Salary and allowances to be in accordance with service rules (Rajasthan Educational Subordinate Service Rules, 1971, Rajasthan Panchayati Raj Rules, 1996 and Rajasthan Panchayati Raj Prabodhak Service Rules, 2008, as the case may be) (19, RTE Rules 2011)</li> </ul>
2.3	Can the school select its teachers and staff without government involvement?	No	A nominee of the director is involved in the process	<ul style="list-style-type: none"> <li>Selection Committee to include officer nominated by Director of Education (26(d), 1993 Rules)</li> <li>Competent authority to approve candidates recommended by Managing Committee (27, 1993 Rules)</li> </ul>
2.4	Can the school dismiss its teachers and staff without government involvement?	No		Director to approve dismissal of employees (39, 1993 Rules)
2.5	Can the school choose the medium of instruction, textbooks, co-curricular	Yes	However, some norms are provided in the 1993 rules	Appendix 2, 1993 Rules

	activities, games and physical activities?		related to learning material and physical activities	
2.6	Can the school decide its own admission procedure?	Yes	However, the school has to adhere to 25% reservations under the RTE	
2.7	Can the school decide the quantum of tuition fee to be charged from students?	No	The fee is to be regulated by executive orders. In 2014 a fee regulation Act was introduced; now a new act is being considered	7, Appendix 2, 1993 Rules
<b>3 - Accountability and Transparency</b>				
3.1	Is there any provision for minimum learning standards?	No	However, 'satisfactory exam results' is a condition for recognition	Rule 4(ii)(c), 1993 Rules
3.2	Is there any provision for inspections?	Yes		Inspection can be conducted at any time by state officials (17, Appendix 2, 1993 Rules)
3.3	Is there any penalty if the school does not meet inspection standards?	No	Not specified in the Act/Rules	
3.4	Is there any provision of grievance redress for teachers, parents and students?	No	It is only provided for teachers, children and parents in government schools	Rules 24 and 25, Rajasthan RTE Rules
3.5	Is there any provision for the school to disclose information to the government?	No	Not specified	
3.6	Is there any provision for providing information about the school to parents and other stakeholders?	Yes	List of 12(1)(c) admissions to be displayed on school notice board/website	Rule 10(7), Rajasthan RTE Rules
3.7	Is there any provision for a PTA?	No	Not specified in the Act/Rules	

## UTTAR PRADESH

	POLICY GOAL INDICATORS	ANSWER (YES/NO)	COMMENT	LEGAL PROVISION
<b>1 - Ease of Opening Schools</b>				
1.1	Is there no restriction on who can open a school?	No	A society registered under the Society Registration Act, 1860 or public trust lawfully registered	R. 11(1)(a), U.P. Right of Children to Free and Compulsory Education Rules, 2011
1.2	Is there no restriction on the ownership of land required to open a school?	Yes	The society should either own the land or hold it for at least 10-year lease.	<u>U.P. Government Order No -419/79-6-2013-18 (20)/91</u> (Revised Norms and Conditions for giving recognition to Non-Governmental English medium, Nursery/ Primary/ Junior High Schools), 2013
1.3	Are there different land norms for different types of schools?	No	Although, relaxation of neighbourhood requirements and obligation to provide transport for habitations where it is unviable to build a school inside the neighbourhood limits.	R. 4(2), UP RTE Rules
1.4	Are there no conditions for recognition which may be regarded as stringent/prohibitive? If no, please specify	Yes	Minimum area per student and per class room could be difficult to comply with. Regulations also provide for minimum number of classrooms depending upon the number of students	U.P. GO (2013) says: <b>School Building:</b> - The space should be available @ 09 sq ft per student in every class of the primary school but the area of the class room shall not be less than 180 sq ft i.e. Seating arrangement of minimum 20 students so that academic activities can be run comfortably in the class. Only so many Boy/ Girl students shall be admitted in the school whose proper seating arrangement

				is available as per the prescribed format. There should be library and reading room in the school.
	Minimum standards for land		Regulations provide for minimum area per student (9 sq. m.) and per classroom (180 sq. m)	
	Minimum standards for school building		As per the standards set out in National Building Code	
	Minimum standards for classrooms		Minimum size of class room is 180 sq km. The regulations also specify per-child area as well as minimum number of classes for admission of stipulated number of children.	
	Quantum of fee		Rs. 3000 (Rs. 2000 in case only a primary school is sought to be recognised) as recognition fee and Rs.10000 worth of National Savings Certificates	
<b>2 - Operational Autonomy</b>				
2.1	Can the school decide the qualifications of its teachers and staff?	No	Minimum qualifications as provided in RTE Act	R.15, U.P. RTE Rules. The minimum qualifications for teachers, laid down by an authority, authorized by the central government, by notifications, shall be applicable for every school referred to in clause (n) of Section 2.
2.2	Can the school decide the salary of its teachers and staff?	Yes	No apparent restriction in the rules. As per the rules provided in the respective Manual. Although pay parity with government school teachers cannot be forced as per the order of the Supreme Court.	R.18, U.P. RTE Rules
2.3	Can the school select its teachers and staff without government involvement?	Yes	No involvement of government as such with respect to recruitment of teachers. However, to maintain pupil-	R. 21(1)(2), U.P. RTE Rules.

			teacher ratio the district manager is required to estimate total requirement of teachers and the same would be communicated to schools.	
2.4	Can the school dismiss its teachers and staff without government involvement?	Yes	No legal infirmity apparent from the RTE Rules and the Government order.	
2.5	Can the school choose the medium of instruction, textbooks, co-curricular activities, games and physical activities?			
2.6	Can the school decide its own admission procedure?	Yes	RTE Rules require that admission under Section 12(1)(c) should be transparent. Also, the recognition forms require declaration against employment of screening procedures for admission of students.	Rule 8, U.P. RTE Rules
2.7	Can the school decide the quantum of tuition fee to be charged from students?	Yes	However, restrictions are placed with respect to fee-hike. It also provides the heads under which the fee could be charged.	U.P. GO (2013)  The recognized schools will collect that Tuition fee and dearness fee from students on monthly basis which is sufficient to maintain teacher/employee welfare scheme contribution. Besides out of above Tuition fee and DA after payment of teachers salary the balanced saving should not be more than 20%.  There can be no increment in Tuition fee for 3 years and after 3 years

				<p>when it is increased, it will not be by more than 10%. The school may further charge under following heads.</p> <ol style="list-style-type: none"> <li>1) Education Fee</li> <li>2) DA</li> <li>3) Development Fee</li> <li>4) Electricity and Water</li> <li>5) Library and Reading room</li> <li>6) Science Fee</li> <li>7) Others</li> <li>8) Sports</li> <li>9) Exams/Evaluation</li> <li>10) School Function/ Festival</li> <li>11) Special Subjects - computers/Music</li> </ol>
<b>3 - Accountability and Transparency</b>				
3.1	Is there any provision for minimum learning standards?	Yes	A government order provides for evaluation of students based on continuous and comprehensive evaluation. For this it stipulates annual and semi-annual examinations. It stipulates a scheme for writing and reading tests. No child shall be detained and the result report card would be given at the end of the session.	U.P. GO - 529/79-6-2015, Guidelines regarding implementation of examination/evaluation system in Class 1-8 (available at: <a href="http://www.upefa.com/upefaweb/officcopy/July-15/GO_529.PDF">http://www.upefa.com/upefaweb/officcopy/July-15/GO_529.PDF</a> )
3.2	Is there any provision for inspections?	Yes	The recognition norms specify that the school could be government officer or local education officer. Further, it says that the officer cannot be below the rank of section	U.P. GO (2013)

			Shiksha Adhikari or District Magistrate.	
3.3	Is there any penalty if the school does not meet inspection standards?	Information unavailable		
3.4	Is there any provision of grievance redress for teachers, parents and students?	Yes	Children and parents/guardians could seek redress of their grievance from Right to Education Protection Authority (REPA) constituted under Section 24 of U.P. RTE Rules	Complaints could be made under Rule 25 and the Authority is created under Rule 24 of the U.P. RTE Rules. However, it is only an interim body in the absence of SCPCR.
3.5	Is there any provision for the school to disclose information to the government?	Yes	As part of recognition norms, the schools are subject to inspection. Also, schools need to make information about S.12(1)(c) admissions public. The schools are also required to furnish reports as may be required by the Director of Education/ Zila Shiksha Adhikari.	U.P. GO (2013), Rule 8, U.P. RTE Rules, 2011
3.6	Is there any provision for providing information about the school to parents and other stakeholders?	No		
3.7	Is there any provision for a PTA?	No	Not specified	



