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Non-state actors in Education – South Asia

REGULATION OF NON-STATE ACTORS IN SCHOOL EDUCATION IN INDIA

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ABSTRACT

The last few decades have seen an exponential rise in the demand for education, especially from sections of the population hitherto deprived or left out of the net. This has put national governments with already stretched capacity under a lot of pressure to reach out and provide quality education for all. It has also created space for greater non-state participation in provisioning of schools, as well as, supplementary services. India is no exception to this development. In fact, non-state engagement in education in India now extends not just to schools and supplementary services but to policy intervention as well. As education is still regarded as a public service and the Constitution of India clarifies that it must be treated as a 'charity' and not as a commercial enterprise, regulation of non-state provision emerges as a crucial activity. However, India lacks an overarching regulatory structure and framework. In its absence, rules are made on an ad hoc basis within different government structures (both national and state) for entry and exit of non-state providers and in some instances for their operational procedures as well.

This paper examines non-state provisioning of education in India - at the level of schools and of supplementary services – particularly from the lens of regulations that exist and the extent to which they are being applied. The discussion on the non-state is placed in the context of the state – its capacities, policies and political inclinations. The paper provides detailed information on the processes for regulation on paper (as available in the public domain) and through interviews of key stakeholders. The latter includes insights of teachers and frontline officials as well as private providers on the functioning of the regulatory system, as well as their perceptions of what needs to be done to improve it. It concludes with a discussion of the shortfalls in the system, especially as it relates to the social and public goals of education such as equality and diversity, but also accountability to the public. Recommendations include the need to develop a robust and overarching framework with requisite increases in state capacity, a regulatory framework that is flexible and aligned to the real goals of education, and the need to strengthen transparency both for more efficient governance but also to enable increased citizen awareness and participation.

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1. Introduction

The last couple of decades have seen an expansion in the role of the private in public services, including in education. In the South Asia region, for instance, private schools account for around one-fifth of all primary school enrolment (World Bank EdStats)¹. In India too, the proportion of children studying in private schools has increased steadily every year, and now stands at 37 percent (UDISE+, 2019-20). But private participation has a complicated relationship with the education sector. On the one hand, in most models of democracy, it is the responsibility of the State to provide basic education as part of the package of citizenship rights guaranteed by the state (Marshall, 1950). On the other hand, in many of the newly formed nation-states, like India, capacity constraints have seen states turn to non-state actors to fill the gaps. This is the result of a burgeoning demand for education from hitherto unreached populations that has failed to be matched by state supply. But the need to increase access, without a corresponding increase in financial commitment from the state, has led to changes in the quality of public education. The impact on declining quality has been noticed especially on learning levels, prompting a review of state provisioning and an increase in the space for the non-state.

In more recent years, the nature of non-state engagement has taken new forms as the scale of reliance has grown, encompassing both direct provisioning of schools as well as provisioning of supplementary materials and services. Thus, apart from building and running schools, non-state actors also provide supplementary services such as textbook publishing, content creation, teacher training, Mid-Day Meal (MDM) preparation, support for Information and Communications Technology (ICT), managerial inputs, and overall policy support, among other things. The expanding range of activities for non-state engagement has been accompanied by an increase in the variety of organisations as well as arrangements between the State and non-state. As a result, the non-state now includes for-profit commercial enterprises, not-for-profit non-government organisations (NGOs), and religious groups, with the boundaries between the different organizations often being thin. In addition, public private partnerships (PPPs), where the State and non-state actors enter into agreements to jointly supply a service, are emerging as the “new religion” to quote Minnow (Minnow, 2003).

In the Indian lexicography of school provisioning, there exist government, private-aided² and private-unaided schools. The difference between private-aided and private-unaided is the support received from the State by

¹ <https://datatopics.worldbank.org/education/>

² In India, many-a-times the terms ‘private-aided schools’ and ‘government-aided schools’ are used interchangeably as these schools receive grants-in-aid from the government.

the former. This support could be in the form of funds, land, management, or infrastructure. While the private-aided and private-unaided are not further differentiated by management types, i.e. NGO or private corporate, we now have the category of PPP or public private partnerships, technically not included in the private-aided category either. In other words, the “non-state” sector includes, all private-aided and unaided (NGO-run or corporate run), and schools run through PPPs.

However, for supplementary services, no known categorization exists. While some, like MDM provisioning may fall into a PPP model, managerial and policy inputs are harder to classify. The conversion of state initiatives into “Project Management Units” (PMUs), operated by private sector actors, is a case in point, as they relate to an organizational modality within the State, but populated by non-state actors. Provisioning of textbooks or additional teachers, to take another case, appear to be based on individual Memorandums of Understanding (MOUs) – each on a case by case basis - and none available in the public domain. Hence, the nature and form of these partnerships is hard to analyse.

In addition to such forms of involvement that are known, and for which there is some data available, albeit insufficient in many respects, there is also a burgeoning non-state sector of private tuitions or coaching classes that is also difficult to categorize. The reason being that they operate in place of school education, while not functioning as full-fledged schools. In that sense, they fall in-between a supplementary service and school provisioning, creating a kind of “hybrid” model. The spectre of private tuitions to supplement school teaching has been increasing in India, but what is relatively new is the shift, of tuition classes or coaching, from being a supplement, to actual replacement of school education. The demand for this appears to have come from parental anxieties about their children’s admission to college. This takes the form of entrance exams to technical colleges or astronomically high grades on Board exams (Grade 12) for admission into regular colleges. For both, coaching is believed to be essential, and as competition for places in colleges has grown (itself a result of the increase in demand for education) the perceived need for tuition has also increased. This has prompted tuition centres morphing into full-fledged coaching centres, which children attend on a daily basis, instead of school, in the hope of being able to move to the next level of education. While this phenomenon was reported a few years ago where certain cities (Kota in Rajasthan) had reinvented themselves as centres of such coaching with a whole industry growing up around them, it is no longer restricted to a few cities, but the model appears to have become fairly widespread, though largely undocumented or regulated [as told to us by a senior government official].

In the school education sector in India, the spectre of tests and testing, of measuring learning through test scores, of ranking performance of schools but also districts, states and even nations, through an aggregation of numbers, and of linking numbers to financial incentives, is a theme that has been growing in recent years. In the next few sections, we try to understand this phenomenon through its links with the private sector and its growing influence on education. This is necessary, given the vast array of services provided by non-state actors and the range of providers involved, but also because the non-state must be understood in the larger context of the State and how the changing relationship between the two is impacting the education sector. To do so, we look at i) policy shifts within the State and its links with the non-state; ii) links of business and politics, and its influence on education; iii) making education a political issue and its repercussions on non-state participation, and iv) the changing face of state capacity and the role the non-state in it. We will close this section with a brief look at the impact of these shifts on inequities within education – a persistent challenge, especially in the context of the non-state.

1.1. The Rise and Implications of Non-State Provisioning in Education

a. Policy shift from provisioning to agenda-setting and what it implies

According to the Dasra Report (Dasra Report, 2010) which has traced the changing role of non-state actors in India in the last few decades, the shift that has occurred in this period is one where the non-state actors have moved from the periphery of education provision to a more central position. A reading of the Five-Year Plans clearly reflects this change, with each subsequent plan showing an increased focus on PPPs including the importance of garnering more public support to ‘make PPPs acceptable’ and ‘create credible PPP projects that evoke a positive public response’ (Srivastava, 2010). The Twelfth Plan (2012-17) even saw the creation of the Working Group on Private Sector Participation and Public Private Partnership in School Education, whose role was to outline the parameters for ‘promoting public private cooperation and involvement’ (Srivastava, Noronha, & Fennell, 2013) ; (Srivastava, 2010).

Underlying the diminishing role of the State in financing, regulation and management, there appear to be strong shifts in the trajectory of private players from provisioning of schools, to provisioning of supplementary services, to providing managerial expertise, and now to setting the policy agenda. This is a monumental shift that needs unpacking as well as rigorous assessment. It is monumental because the earlier involvement of opening schools or even provision of some supplementary services can be seen as an addition, or supplement to state capacity to meet the rising demand. But the managerial and agenda setting inputs signal an

involvement of a very different nature that impacts all aspects of education, and calls into question the role of the State as it relates to education as a public service. Two specific examples of how the latter involvement of the non-state has moved the needle on our understanding of public education are: i) a change in the understanding of quality in education, and ii) the imposition of managerial standards on performance of schools and especially of ranking based on centralized metrics, and through it the delinking of the local context.

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While it is true that the thin spreading of State resources to match the increasing demand, has had a negative effect on the quality of service provided, the increasing use of numerical metrics of learning outcomes, cost efficiencies and accountabilities that dominate the conversations on education, are a result of the larger role played by the private sector. This is because social justice, equality and democracy - goals of *public* education - do not figure in the indices of quality used by the private. Hence, for instance, 'cost per unit of learning' (Kingdon G. G., 2020) has become a favoured indicator, whereas equity, diversity in classrooms, reaching the last child, or even making space for non-cognitive learnings, have fallen off the grid of quality. While improving cognitive (and measurable) learning is certainly a desirable goal, the urgency with which that alone has acquired centre-stage, with less regard for the other goals, is a cause for some concern. The anxieties to conform to these numerical standards is leading to various forms of distortions in the system from "teaching to the test" to the emergence of "hybrid" models of schools, as mentioned above, all with detrimental effects on children and their education. Worse still, some of these developments are going un-documented and unregulated.

This shift in focus can be seen as a shift in emphasis towards "governance" as opposed to "government", where the former is about techno-managerial aspects of State functioning, but government is about the State, its legitimacy, and citizen rights (Chandhoke, 2003). In recent years, the public narrative has veered more towards governance, where education goals have come to be defined in terms of *measurable* outcomes and cost efficiencies. The technocratic emphasis that accompanies the discourse on governance tends to obfuscate issues of inequality and citizenship, which are less amenable to measurement. This shift aligns with the shift

towards more involvement of the private, where governance is framed in private management terms and performance in measurable outcomes. In other words, the private is becoming more and more a measure of the public.

While learning outcomes are important markers in education as is the need for governance reform, the challenge appears when: a) the problem becomes a trade-off between better learning outcomes and improved social outcomes, with learning outcomes given greater priority over other social goals of education, and b) governance reforms take the form of greater involvement of the non-government, especially of the culture, operating styles and priorities of the non-state, at the cost of goals of public education.

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It is important to recognize that trade-offs exist because there are vast disparities in the social and economic contexts of children that impact their learning environment, and the resources of the State are a constraint. The need to prioritise returns on investment by focusing solely on improvements in outcomes bypasses these disparities, thereby widening the gap between those who are better enabled to improve their outcomes and those that are not. Implicit in this is the failure to acknowledge that learning, especially for the marginalized and vulnerable, is a long-term process. Showing an increase in annual outcomes – often the need of private funding – is based on a short-term vision that must necessarily rely on the low-hanging fruit, as it were, ignoring or neglecting those that take longer to ripen, because of the social or economic contexts they are in. The focus on digital forms of learning engendered by the pandemic is a case in point – with several states broadcasting virtual classes via television or radio stations, and the elite private schools relying on online mediums of instruction. The evidence from private providers is not encouraging thus far, in terms of creative thinking regarding inclusion. Thus, even as the digital divide is acknowledged, attempts to cross the divide and bring the unreached into the fold are hard to come by. In fact, there is a growing perception within State circles that issues of “equity must be de-linked from those of education”, allowing the private sector free rein to provide ‘quality’ education for the elites, while the State focuses on strengthening the public education

system for the less privileged (interview with a government official). This corroborates the understanding of education as a governance issue not related to citizenship and democratization. Framing the education problem in this way makes the participation of the non-state not just easier but even sought-after.

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--- Interview with a government official

A related element of the policy shift in education that bears mentioning is the increasing focus on “skilling” and the corresponding role of the private sector in its production. As a senior bureaucrat, candidly, admitted, “skilling is for the poor, while education is for the well-off sections of the population”. The implicit understanding of such policy shifts is that since the poor are unlikely to make it to higher levels of education and organized sector jobs, taking the skills route may be presented to them as a more practical option. The inequity involved in this approach, has been echoed by senior educationists as well (Sadgopal, 2016)³.

Governance reforms in general have taken a similar form of abstracting, or being placed away, from the State rather than opening the black box of State administration, and reforming it from within. Greater non-state participation, greater reliance on technology, and reducing the size of the State, have appeared as favoured directions of reform. ‘Innovations’, for instance, have become the euphemism for new forms of partnerships with the non-state. An example of this innovation in governance reform appears in the form of PMUs as mentioned earlier, where non-state actors are appointed within these units to provide leadership in management. All operations of the State for implementing education, including teacher-training or professional development of teachers,⁴ are proposed to be directed through such units. Most recently, following the passage of the National Education Policy (NEP, 2020), MOUs have been signed by various states with a private partner to provide personnel at the state level to develop their foundational learning projects (interview with an education expert who worked within the MoE).

³ In the Indian context skill training has been conceived of as a public private partnership with a sharing of resources and management expertise. However, while the earlier phase saw a larger number of vocational training centres run by the state, the ratio of private to public management has increased to 85:15 in recent years, with the share of resources provided by the state moving in the opposite direction, i.e., state providing most of the resources and the private sector managing most of the training centres or ITIs. Interestingly, the same bureaucrat also admitted that the outcomes in these centres were very poor and employment opportunities remained limited. His explanation for this lay in the poor or lack of regulation of the sector.

⁴ Non-state actors have been asked to participate in the state platform for teacher development, called DIKSHA.

Another element of such policy influence that bears mentioning is the indirect (and in some instances the direct) involvement of international agencies in pushing for greater involvement of the non-state and their agenda. This too has taken different forms such as the pressure brought to bear through testing regimes like the Programme for International Student Assessment (PISA) or the conditionalities imposed by agencies such as the World Bank for financial aid provided by them. While the introduction of PISA in India, raised a storm as the results were below par, it has led to the Union government instituting the National Achievement Survey (NAS) based on an indigenously developed methodology. Unfortunately, the pressure of rankings is leading to political interference by parties in power in different states to ensure that their state comes out ahead. The interference is taking the form of self-selection of schools with a higher chance of performing better and also targeting learning towards the test or teaching to the test - so that the results are favourable (interview with an education expert who worked in MoE). Another aspect of this pressure has been the establishment of the Performance Grading Index (PGI) by the NITI Aayog, the apex public-policy think tank of the Government of India (GoI). The PGI has a list of indicators that grade performance of states, based on which financial allocations are proposed to be made, in a bid to set into process a competitive cycle among the states. One of the indicators is partnerships with the private sector. It seems ironic that states that forge greater partnerships (and presumably acquire greater resources) are then eligible for even greater resources from the State! Similarly, the newly launched Strengthening Teaching-Learning and Results for States (STARS) program with World Bank funding that lists five areas of support, including one that is 'mandatory,' termed 'system strengthening', focuses on partnerships with the non-state as a form of system strengthening. [For more on the STARS project, see (Bhatty & Haus, 2020); (Taneja, 2020)].

The focus on partnerships with the non-state as a way of strengthening the system, which seems contradictory at one level, needs unpacking. It appears to come from an understanding that the State needs support from the non-state to strengthen its system – in other words to build its capacity. The question however is: which capacity or capacity for what? Where is the State lacking in capacity and how does or how can the non-state meet that gap? We visit this question in **sub-section d** below, but before doing that we examine another aspect of the shift in policy i.e, the influence of politics. As the impact of the paradigm shift particularly on equity, citizenship and democracy is consequential, it signals not just a change in education delivery, but a transformation of the State as a political agent. Failure to take note of the pathways through which this shift takes place, puts not just the goals of education, but the wider agenda of citizenship and democracy, on a very slippery slope. One of the pathways is politics, which we examine next.

b. Links of business and politics and their influence on education

Notwithstanding the denial among policy makers, there is growing recognition in academia that the increasing involvement of the non-state, especially its influence on the larger agenda of education, suggests that the private sector has established close links with the political establishment (Hickey & Hossain, 2019). While research on the increasing influence of business on politics, highlights both its positive and negative impact (Chandra, 2015); (Fairfield, 2017); (Jaffrelot, Kohli, & Murali, 2019), as an area of study, it remains theoretically and empirically underdeveloped. Nevertheless, a glance at the literature shows a lack of consensus around *which* politics matters, and *what* constitutes the empirical evidence around it. Central to the divergent views in examining the influence of politics on education is the structure and function of the State. While one perspective views the State as the site of patronage and inefficiency, the other sees it as the guarantor of rights and citizenship, including social citizenship. Thus, one compilation of research on the subject (Kingdon G. G., 2007), highlights the negative political influence on education reforms, especially those in the direction of greater *laissez-faire* in education and greater involvement of private actors, while the other highlights the responsibility of the democratic State towards education as a right of all citizens. For the former, political opposition to reforms, is believed to come from teachers, their unions (Kingdon & Teal, 2008) and other lobbies benefitting from the patronage-based system of State functioning, that the reforms purport to dismantle.

Scholars looking at education reforms from the perspective of the State and its legitimacy however, present a different picture. Chandhoke (2003), for instance, describes the entry of private, quasi-public and PPPs in the provision of public services, as a “pluralization of the State” where the power and authority of the State is shared with a multitude of non-state actors. Which of the actors in a plural set up is responsible or accountable to citizens and more importantly to elected governments, is the question asked. Other scholars describe this shift as “de-governmentalization” (Rose, 1999), where the State no longer has the monopoly on governing the general well-being of the population. Similarly, legal scholars have questioned, “what happens to the scope and content of “public values when public commitments proceed through private agents?” (Minow, 2003).

It is important to bear in mind here that the Indian Constitution also takes a position on education being a service that is to be devoid of all commercial and profit-making interests. This was reiterated in the case brought to the Supreme Court (SC), seeking removal of the non-state from the ambit of the Right of Children

to Free and Compulsory Education Act, 2009⁵ (hereafter, referred to as RTE Act) and the requirements for the private schools, especially related to the inclusion of children from socially and economically deprived sections of the society. In addition to reinforcing the non-profit clause of the Constitution, the SC clarified to the private school petitioners that the State had the right and authority to direct private schools in the larger public interest, as the inclusion clause of the RTE Act (Section 12(1)(c)) implied. In other words, as far as Constitutionality and the legal arm of the State is concerned, the position of the non-state is clear: it must not be directed towards profit and it is subordinate to the State in the interest of a larger public purpose. It is this understanding that Rose (Rose, 1999), Chandhoke (Chandhoke, 2003) and others who stress the public good argument with its links to equity, citizenship-rights and democracy refer to, when they highlight the dilution of the State with the rise of the non-state. This articulation however does not sit well with the private actors, as noted in the Report on Private Provisioning by the Central Square Foundation – an important non-state actor in education - which openly calls for a revision of the non-profit reference in the Constitution (CSF, 2020). Other proponents of the need to revise the non-profit clause have called for a tax on profits made by the private sector in education as a way of giving back to the public cause, according to some government officials.

Notwithstanding the merits of the theoretical arguments about the nature of a democratic State, which remains a contested issue, a few developments in the political arena in India that have transformed the nature of the State are worth mentioning.

Not all private provisioning is, or need have, negative consequences. In fact, private participation has existed within the education sector in India, for years, and remained largely philanthropic in nature and restricted to opening schools. However, philanthropic involvement in education has changed reflecting the changes in the environment between business, politics and education that mark the last few decades, especially since the post-liberation period of the early 1990s. This period marks a major shift in the size and nature of the business or private sector in India – a shift that has had multiple consequences on education, including through a change in the nature and form of philanthropy. As businesses grew and large multinational corporations acquired space, smaller philanthropies dried up for lack of resources (Sundar, 2013); (Sundar, 1996). The larger businesses in turn have chosen to establish private foundations as the modalities through which they conduct their philanthropy. This trend has increased since the passage of the Corporate Social Responsibility (CSR) clause in the Indian Companies Act (2014), that requires corporations making upwards of a net profit of ₹ 5

⁵ Available online at: https://www.education.gov.in/sites/upload_files/mhrd/files/upload_document/rte.pdf

crores or more, to set aside 2 percent of those profits towards social spending. An estimate by the Ministry of Corporate Affairs shows India has 13,000-15,000 companies falling under the CSR mandate. In fact, CSR in India has witnessed a surge in spending with education seeing an increase in allocations from ₹ 2,589 crore in 2014-15 to ₹ 7,103 crore in 2019-20 – accounting for over a quarter of total CSR funding⁶. Similarly, a study found that 60 to 70 percent of companies' CSR contributions are spent on education initiatives (Nasscom, 2017). These developments have changed the nature of philanthropy by a) increasing their involvement in the provisioning of supplementary services, like ICT, textbooks and assessment materials, teacher training etc., and b) agenda-setting in policy through funding of research and other activities that have a direct impact on policy.

Interestingly, of the businesses that grew exponentially in this period, many belong to the tech-industry. The technology boom that has fuelled the rise of the private sector in India has had multiple consequences on the education sector as well. On the one hand, foundations established by them have taken an active interest in education, but they have also lobbied hard for the influence and use of technology in education. The latter has had a huge impact on establishing a new phenomenon known as “edutech”. According to some reports, the market for e-learning in India is estimated to be around \$3 billion a year and has been proclaimed the next sunrise sector with estimations to reach \$360 billion by 2024⁷. Further, the CSR wings of large businesses are run as private enterprises by a new class of business persons known as ‘social entrepreneurs’. In education, they, along with other new business interests in education, have established a growing, ‘recession-free’ industry known as edu-business. With the single largest share of CSR funds in India going to education, edu-business and edu-tech are becoming increasingly central to education.

While the influence of business on the economic policies of the State has been justified on grounds of businesses being an important part of the economy, it becomes open to question when business influence starts to affect the “public functions of the state” (Jaffrelot, Kohli, & Murali, 2019). Unlike the economic sector, the social sector including education is intrinsically a part of the public functions of the State. Increasing involvement of business thus poses potentially a direct conflict of interest with the publicness of State functioning. Further, the post liberalization period in India, which saw a substantial increase in the size of the private sector (Subramanian V. , 2019), has prompted the State to proactively act in the interest of business,

⁶ Source: <https://www.csr.gov.in/developmentlist.php>

⁷ Source: <https://www.businesswire.com/news/home/20200417005258/en/Online-Education-Market-in-India-Worth-INR-360-Billion-by-2024-Exhibiting-a-CAGR-of-43---ResearchAndMarkets.com>

resulting in business getting “what it wants without actively seeking it”, (Jaffrelot, Kohli, & Murali, 2019). As a result of these developments, not only has the influence of the private sector on State decisions regarding education increased, but the increased influence has come alongside a reduced influence of other non-state actors, creating a ‘hegemonic’ position for private business with respect to education. At the same time, politicians have sought a share in education businesses as a payoff for easing the supply of private education establishments prompting some scholars to describe this as an example of ‘relocated patronage’ (Chandra, 2015) - a shift in the patronage system that took place in the post-liberalization period in India. The involvement of politicians in private education must be differentiated from the idea of businesspersons entering politics through the legislature. The current trend in India, is of inroads of politicians into education following their entry into power and less the other way around. In other words, they use their privileged position in politics, after being elected, to establish private education institutions, or become members of school or college boards, often by circumventing regulatory procedures. The latter has been cited as one reason for the disproportionate increase in politician owned educational institutions in recent years (Sinha, 2019).

While the increasing polarization that has emerged around this issue requires more detailed analysis and cannot be settled here, we look next at the role politics is playing in the education sector in a different way and its impact on non-state participation.

c. Making education a political issue and its repercussions on non-state involvement

It has long been stressed that the political will to improve public education is lacking in India and that education needs to be made a political issue. While, it is yet to get pride of place on the political agenda of most political parties, especially at the national level, some state level political parties (notably in Delhi) have given education more focus than seen before. The attention and resources directed towards education are certainly a cause for celebration, as they have led not just to better infrastructure in State schools in Delhi, but given education a space in the public conversation that was much needed. That said, however, the question of politicization needs un-packing as it has had unintended consequences as well. On the one hand, it has put pressure on other political parties to front their education agenda, which is a positive development as it is creating a competitive momentum for education. On the other hand, however, it is also leading to the adoption of “quick fixes” in a bid to show results and claim political capital. As quick fixes are easier achieved through non-state participation (avoiding bureaucratic hurdles etc.), politicization appears to be creating a greater involvement of the non-state, rather than an improvement of state capacity to deliver on education goals. In fact, it is also

leading to a compromise on some of the public goals of education, such as equity, which are not amenable to quick fix solutions.

d. State Capacity

Implicit in the developments mentioned in the preceding sections is the issue of state capacity. While it is hard to determine with certainty, the genesis of the problem, it would be fair to say that as state capacity failed to respond to the increase in demand, reliance on the non-state set in motion a downward spiral in state capacity, spurred by the shifts in the politics and policy towards the non-state. So, what are the capacity gaps?

Human Resources

Contrary to popular perceptions, the State in India is in fact very small, particularly in relation to the population it serves. The US, for instance, not considered a proponent of large government, has 668 government employees per lakh population, compared to 139 in India [7th Pay Commission Report, 2015]. One of the glaring aspects of the capacity constraint is the acute shortfall in human resources throughout the implementation structure. This is reflected not just in the low numbers, but also in the inadequacies of training and qualification of the personnel involved. Thus, as seen from the annual work plan and budget documents (2020-21) of the education ministry, more than 11 lakh [11,09,486] teachers' posts lie vacant in government schools across the country. In Jharkhand, this amounted to 40.5 percent vacancies; in Bihar 40.3 percent; and in Uttar Pradesh 29 percent. And this is not accounting for the teacher requirement for the millions of children currently out of school. What is worse is that 25 percent of teachers that are appointed do not possess the requisite qualifications [U-DISE, 2017-18], reflecting another dimension of poor capacity.

While these figures reflect the lowest rung of government, the shortages extend to the block and district levels as well, adding to the burden of inefficient delivery. For instance, a recent study of five states in India [Rajasthan, Odisha, Himachal Pradesh, Karnataka and Delhi] (Bhatty & Saraf, 2016), showed that 70 percent of the District Education Officers and 42 percent of Block education Officers had 'dual charge', i.e, they were in charge of more than one district or block. With each district catering to hundreds of schools, this is no mean task. Further, only 30 percent of the Block Resource Coordinators (BRCs) and 54 percent Cluster Resource Coordinators (CRCs) had received training for their jobs.

Even as these shortfalls abound, the range of tasks expected of the lower bureaucracy has only grown, without commensurate training or assistance for the increased workload. For instance, in addition to the regular work of dispensing finances, making appointments, effecting transfers, and other provisioning, education officials

are now expected to collect and collate larger amounts of data, follow up on ever-increasing legal cases and be available for a myriad other forms of government duty. However, there are no legal assistants or data enumerators or other assistants in the system.

A recent study by Accountability Initiative, CPR looking at time allocation and perceptions of around 200 teachers in Delhi found 66 percent reported non-academic work as one of the biggest hurdles in their profession and 93 percent of all respondents felt that paperwork took up a lot of time. In fact, of the 107 Municipal Corporation Department teachers surveyed on their time use, more than half reportedly spent time on school related activities, beyond the official school timings. Similarly, 38 of the 85 Department of Education teachers (DoE) teachers reportedly spent a combined total of 39 hours working beyond the official school timing (Davis, Singh, Kapoor, & Mathew, 2019). Similarly, a recently concluded study by the National Institute of Education and Administration (NUEPA) also found that teachers are able to devote only 19 percent of their time to teaching – the rest being consumed by non-teaching tasks imposed on them⁸. With the shortages in staffing, it is no wonder that learning levels have declined in the manner they have.

The lack of capacity – both in terms of the limited staff but also related to motivation and rules of engagement are not just limited to teachers but have been found across the chain of the frontline bureaucracy. For instance, in theory the education system envisages the post of a CRC responsible for around 25 schools for providing academic support to teachers. Yet, a small time-use study of CRCs by Accountability Initiative, CPR found that school visits were mostly unplanned and guided by immediate data requirements. Once inside schools, in 3 out of the 4 CRCs followed over time, less than 21 percent of was actually spent inside classrooms⁹. Another time-use study of BEOs between December 2012 and February 2013 with 16 officers across 6 districts found that of the nearly six hours a day spent in official work, a majority was spent conducting school monitoring visits mostly to respond to district requests for data or chasing/communicating district orders (Aiyar & Bhattacharya, 2016).

Organizational Design and Norms

⁸ <https://www.deccanchronicle.com/nation/current-affairs/220918/teachers-spend-only-191-per-cent-time-teaching.html>

⁹ Research Brief, “Mapping work flows of frontline education administrators: Cluster Resource Centre Coordinators in Bihar”, India. Available online at: https://accountabilityindia.in/sites/default/files/pdf_files/CRCC_Recommendations.pdf

The failure of state capacity is also manifested in the current structure, organisational design and norms – or the way any organisation sets goals and monitors itself and its employees. This it is believed has implications on productivity and performance. Yet, this is often where the State fails. A close reading of the rules, guidelines and budgetary allocations for elementary education found that even where functions have been delegated to the local block/district administration, for the most part the actual decision-making authority rests with the state government. Consequently, elementary education administrators viewed themselves as a mere “post-office” – “disempowered cogs in a hierarchical administrative culture that renders them powerless” (Aiyar & Bhattacharya, 2016).

Linked to this is the nature of recruitment and retention. Studies have shown that a supportive school environment and leadership, structured recruitment, transfer and appraisal policies, and salary and payment processes, all play an important role in motivation (CBPS, 2011). This in turn affects performance including teaching practices and thereby student motivation. Yet the public education system often lacks clarity and transparency in these processes. For instance, promotion opportunities for elementary school teachers have always been limited and teachers often retire from the same post. Moreover, since actual teaching is rarely monitored, building networks and patrons gains importance. This can help to avoid “punishment postings”, or ensure appointments, promotions and special assignments (Ramachandran, et al., 2018). The increasing use of contract teachers by several states has further added the element of job insecurity to the profession. A conversation with a senior government official from Andhra Pradesh referred to the professionalism of the private sector as one of the key reasons for the proliferation in the education space. Speaking of the State provisioning of education, he stated, “no one in government wants to be proactive as they don’t know their tenure, there is a lot of work and people have their own interests which may have different objectives and agenda.”

These organisational norms are reflected not just in the internal dynamics of motivation, culture and hierarchy but also in simple processes of fund flows, procurement and distribution. This often results in even seemingly successful pilots unable to be scaled to the same level. This was echoed by a senior official of the MoE, when making a distinction between “scale” and “efficiency” and explaining that while the State has the advantage of taking ideas to scale, they often lack the propensity for efficiency. In particular he referred to the inability to innovate and experiment with new ways of operating that could improve efficiency.

“No one in government wants to be proactive as they don’t know their tenure, there is a lot of work and people have their own interests..., objectives and agenda.”

---- A senior government official

Financial resources

Several years ago, the Kothari Commission (1964-1966) proposed a common school system along with a phased increase in public spending for education to 6 percent of India’s Gross Domestic Product (GDP) by the year 1985. This target was reiterated by the National Education Policy (NEP) 2020, on the requirement for public investment in education for India. However, India has consistently failed to achieve this level. In the Financial Year (FY), 2019-20, the public expenditure on education was only 3 percent of GDP (Economic Survey, 2020-2021). Despite the launch of several Centrally Sponsored Schemes (CSS) such as the Sarva Shiksha Abhiyan (SSA), Rashtriya Madhyamik Shiksha Abhiyan (RMSA) now integrated in Samagra Shiksha, fiscal commitments have not kept pace. Recent analysis by Accountability Initiative, CPR has found that for the past few years, allocations for the scheme have been considerably lower than those projected by the Cabinet Committee on Economic Affairs (CCEA) or even the MoE. In FY 2018-19, for instance, while the CCEA approved an outlay of ₹34,000 crore, revised allocations stood at ₹30,781 crore. Similarly, the revised allocations were 12 percent and 39 percent less than the projections for FY 2019-20 and FY 2020-21, respectively¹⁰. Even states, which form a bulk of the school education spending contributing over three-fourths to overall education expenditure have failed to invest significantly in education, barring a few exceptions. A recent report by Accountability Initiative found that in FY 2017-18, public expenditure on school education as a proportion of GSDP ranged from 3.7 percent in Himachal Pradesh to 1.8 percent each in Maharashtra and Tamil Nadu (Bordoloi, Pandey, Irava, & Junnarkar, 2020).

This problem of ‘scarce resources’ attributed to India’s low tax to GDP ratio has often been used to justify the insufficient financing of public education. However it’s also been used by both international agencies and domestic governments to lobby for an increase in the role of non-state in education (Srivastava, 2010). In fact, scholars have argued that this expansion of the private sector in meeting additional capacity against the backdrop of limited resources played a role in under-financing the RTE Act (Noronha & Srivastava, 2014). The

¹⁰ Forthcoming Budget Brief on Samagra Shiksha, 2022-23, Accountability Initiative, Centre for Policy Research, Delhi, India.

Volumes for the previous years are available on: <https://accountabilityindia.in/budget-briefs/#2021>

presumption was that it was the expanding private sector which would make up the additional capacity required to cater to the out of school children. Recent analysis by the Reserve Bank of India (RBI) attest to this change. As the report states, “State-wise analysis shows no correlation between [public] education expenditure and the share of the young in the population, probably reflecting the growing role of private education” (RBI, 2020).

Whether it is the lack of political will or a conscious underspending in public education with a presumption that the non-state would meet the deficit, the result is a gap in state capacity to invest adequately in education. Added to this are the deficiencies at the level of implementation through shortages of human and financial resources, but also at the level of ‘efficiency’ through poor organizational norms. The question that arises is: *To what extent is the non-state able to fill these state capacity gaps?* We turn to this question next.

State capacity vs. Non-State capacity

The question of capacity must be placed in the context of the relative strengths and weaknesses of the State and the non-state. What capacity gaps within the State can the non-state fill? And where does the non-state interfere with the core functions of the State in filling the gaps?

A useful way to unbundle this issue and to answer the question of which functions/activities should be provided/financed/monitored by the State is to adapt the framework used by Pitchett and Pande (Pritchett & Pande, 2016) of first principles of public finance and accountability. Accordingly, some activities such as standard setting, monitoring and evaluation are best placed to be done more centrally (by the state) to ensure better economies of scale, and more accountability and equity. To give a few examples, it is fairly well acknowledged that one area that the non-state cannot compete with the State or replicate the State is the ‘scale’. It is only the State that can take ideas, plans and policies to scale, especially in a country the size and diversity of India. Related to this is the ability, as well as responsibility, of the State to reach the last mile. Reaching children in difficult areas – forests, river islands, conflict zones – is hard for the non-state sector to do, as it requires inputs in infrastructure and other administrative resources that only the State can provide. The cost implications for the non-state to access such areas is typically beyond their capacity. Unfortunately, while these areas remain neglected by the State too, they are nevertheless beyond the capacity of the non-state to service.

The question of capacity must be placed in the context of the relative strengths and weaknesses of the State and the non-state. What capacity gaps within the State can the non-state fill? Where does the non-state interfere with the core functions of the State in filling the gaps?

Similarly, the governance capacity to administer the different elements of education delivery (apart from the pedagogic and academic inputs) especially at the frontline, is also best placed with the State. Hence, positions of the block and the district education officers or the cluster resources persons or the human resources required for data collection and dissemination or the monitoring system are capacities inherent to the State. It is highly debatable if these can be transferred to the non-state. Another related aspect of capacity is that of setting benchmarks. Not only does the State establish standards and norms, but it also sets quality benchmarks at the local level. Hence, in areas where there is a well-functioning government school, the private school that comes up is also likely to be of better quality and corresponding a poor-quality government school will spawn a poor-quality private school in its neighbourhood (Srivastava, Noronha, & Fennell, 2013).

While the foregoing are aspects of capacity, which the non-state would find difficult to build, there are other areas such as asset creation, infrastructural inputs and to some degree technical and operational inputs, that it can help in building. These could include - building a decentralized local Education Management Information System (EMIS) for government schools that would go a long way in assisting the planning process; digital/computer support to local government units (Panchayats) that can help in monitoring performance of schools locally with community support; providing additional manpower support for teacher trainings; or financial support for libraries, laboratories, sports facilities etc. - all of which are sorely lacking in State schools and are areas, where the non-state can play a role.

Unfortunately, the nature of support that is forthcoming thus far is shifting the compass of the State's capacity away from its core functions. Instead of playing a supporting and supplementary role, the non-state is acquiring a central position in the apparatus of the State that is affecting the capacity of the State to perform its role as the provider of a public service. As noted by Padma Velaskar (Velaskar, 2015) in her study of public private partnerships in Mumbai Municipal schools, this arrangement has led to a "complete disappearance of the public education function of municipal schools". The techno-managerial focus, the efficiency agenda, the

outcomes approach that the non-state is bringing on to the table is affecting the capacity of the State to reach the less fortunate, the harder to reach and the harder to teach. The impact on equity is inevitable.

1.2. Equity and the Non-State Sector

One of the continuing concerns within the education sector is that of equity. This is especially the case in India, which has vast variations in terms of social groups, geographic locations, gender, and income levels, within its population. While a great deal of improvement has been made in several areas, especially in terms of the participation of girls, sufficient gaps still exist across most social, economic and geographic divides. While non-state participation, especially the engagement of the private sector brings with it some resources, the culture of functioning that is focussed on efficiency and the achievement of outcomes, comes with a price. The price is equity.

The trade-off between efficiency and equity, which has its origins in economic literature, has in recent years spilled over into the discourse on education. The framing of the public sector, or the State, as the irreparable site of inefficiency, and the private as efficient (not prone to the vagaries of political interference, rent-seeking and other forms of sub-optimal behaviours), a narrative has been created that favours greater involvement of the non-state. This was most succinctly stated in an interview with a government official, when he said that “equity must be de-linked from education”. As mentioned earlier the parameters of efficiency are also defined in terms of quantifiable outcomes, such as test scores and cost savings. Both of these goals have a direct impact on equity. It is no surprise then, that for the non-state, in particular the private corporate, equity is not a consideration.

Equity plays out in non-state provisioning in multiple ways. The most straightforward way is in keeping out children from the lower economic strata of society. The distribution of children by social and economic groups across private and public schools corroborates this as more children from well-off families are found enrolled in private schools, while government schools have a disproportionately higher proportion of children lower economic strata, as seen in the large difference in household expenditures on education between private and government schools (see **Section 3**). While it is true that private schools have traditionally catered to elite sections of society, the emergence of low cost fee paying schools have appeared as a counter to the equity implications of this phenomena. However, it is not clear to what extent the low cost schools are genuinely able to cross the class divide and also if the quality of these schools is able to pass muster. Anecdotal evidence

suggests that on the issue of quality, there are several compromises, including in the form of poorly trained and low paid teachers. The implications of this are:

- a) that poorly trained teachers are considered acceptable for students who cannot afford better quality private schools.
- b) that parents from less privileged backgrounds who are lured into private schools in the hope of acquiring better quality education for their child at a fee, even if low, end up with less than what they expected. Further, the tenuous financial situation of low cost schools has also meant that their own viability is at stake, putting the children studying in them at great risk. Unfortunately, the regulatory mechanisms are unable to either keep an eye on these operations or prevent them from functioning in the manner they do.

Another way in which equity concerns are neglected in the non-state system is with respect to the diversity in the classroom. As will be seen from the data presented in this paper (**Section 3**), private schools have a larger proportion of children from socially-advantaged backgrounds than government schools. Similarly, boys are slightly over-represented in private schools compared to girls. This, of course, has to do with the fact that parents are more willing to spend the extra rupee on a boy's education relative to a girl. But, unlike State schools, which provide incentives for girls (and for lower caste children), the non-state sector has no such initiative. Further, as diversity is not recognized as a goal of education it is not included as a priority in private schools, nor unfortunately as a criterion in the regulatory framework.

At a more conceptual level, implications of keeping costs down has meant not just that expenses on infrastructure are considered unimportant, but also that less trained and less paid teachers are justified. This has obvious implications on quality that is not factored in, especially in the largest growing segment of low cost schools, but more so in terms of the policy impact for all schools. Further, the focus of learning outcomes has the impact of concentrating teaching efforts on those children who are more easily able to achieve better scores to the detriment of those who need more support from the teacher. The latter invariably belong to segments of the population with less academic resources available at home, i.e, from less privileged backgrounds.

Another glaring example of the lack of concern for equity has been seen in the last year, when the COVID-19 pandemic forced schools to close, and learning to shift to digital or online mode. Two consequences of this

development are notable. One, that large numbers of children who did not have access to online means fell off the learning space. Two, smaller private schools, shrunk further in size or shut down, from losing students who could not afford to continue paying fees, and from firing teachers, whose salaries the schools could not afford to continue paying (Naniseti, 2021)¹¹. The latter was the consequence of judicial intervention, which mandated that school fees be suspended for students adversely affected by the pandemic. In other words, while government schools, though not open to in-person classes have not of their volition thrown any children off their rolls, they will be under pressure to take all those who have fallen off the grid back and struggle to get them on track. The private schools as yet are under no such obligation. Judicial intervention has recently been directed at state governments to step in and bail out some of the private schools, in order that children might return to them, but it is unclear how effectively that directive will be achieved (Rajagopal, 2021)¹².

However, what is worth noting is that despite the emergence of the digital divide, the push for online and other modes of digital education continues, led largely by the policy influence of large private sector providers. It is here that regulation could play an important role, ensuring that such a direction be taken only under circumstances that allow for the widespread access to digital resources. Without such a caveat, we face another dimension of a growing divide within the education sector.

Therefore, with the rapid increase in the footprint of the non-state, regulation has acquired somewhat of an urgency. It is more pertinent in India, as the regulatory framework overall and specifically for education, is still at an incipient stage.

Objective of the Paper

In the context of the above background, this paper thus aims to present the existing landscape of non-state provision in education and the regulatory processes in place for non-state providers. In doing so, the architecture of regulation as well as compliance towards regulations and the challenges therein will be discussed as well. We focus on two broad areas of non-state engagement- provisioning of schools, and that of supplementary services. In this process, we also try and highlight certain broader challenges related to

¹¹ <https://www.thehindu.com/news/cities/Hyderabad/private-schools-struggle-to-prevail-over-pandemic/article36108070.ece>

¹² <https://www.thehindu.com/news/national/pay-school-fees-for-children-orphaned-by-covid-19-supreme-court-tells-states/article36143105.ece>

regulation of non-state actors, as well as issues related to the current nature of non-state engagement in the education space. The paper has been structured in the following manner.

It starts with a section (**Section 2**) that gives a brief overview on the approach and methodology used for the paper. This is followed by a section (**Section 3**) on the current status of school education in India with specific focus on non-state provisioning of schools and its growth, based on analysis of secondary datasets. **Section 4** provides an overview of India's regulatory structure with respect to the education sector. **Section 5** delves into the existing regulatory processes related to provisioning of schools by non-state actors, including insights on compliance of these regulations on the ground and related challenges. **Section 6** then follows a similar pattern for the regulations related to provisioning of supplementary services by non-state actors related to school education. Following this, **Section 7** presents a summary of the key discussion points from the analysis of regulations and their current status of implementation. Finally, the report ends with a set of recommendations presented in **Section 8**.

2. Approach & Methodology

This section details out the approach and methodology adopted for analysis in this report. It also describes the data sources, the interviews conducted with different stakeholders, and some of the limitations in the data collection process.

The study uses a mixed methods approach to understand the role of the non-state in India's school education delivery. Secondary research of existing literature on regulations with respect to the non-state providers in education was conducted first. This was followed by analysis of publicly available government guidelines and legal and policy documents that outline the regulatory and monitoring mechanisms governing schools and supplementary services. Some of the key policy documents reviewed include: (a) The RTE Act provisions and the state-specific RTE rules, (b) Other Acts and Rules related to regulation of private educational institutions at the state-level, (c) Financial Audit Reports and Performance Audit Reports of a few states, and (d) State education department websites and relevant government orders.

The secondary research was then used to inform questions for in-depth interviews with various stakeholders involved in the education delivery chain including government officials, teachers (State and non-state), and private providers of supplementary services, to better understand the *de facto* functioning of these mechanisms with stakeholders. For the primary data collection, semi-structured interviews and telephone conversations were conducted. A detailed focussed group discussion was also conducted with the national and a few state level convenors of the RTE forum, a national collective of civil society working on inclusive education and supporting the implementation of the RTE Act. Additionally, secondary data was analysed on the current status of education in India from official data sets, such as the U-DISE Plus and education surveys conducted by the National Survey Office (NSO).

Given the concurrent nature of education as a subject in India's federal system, state governments are free to frame rules regarding education delivery. As a result, different state governments have followed different policies as far as non-state participation and regulation is concerned. To present a more representative picture therefore, information from different states was analysed to see the extent to which there are state variations. A total of six states were selected for state level analysis. States were purposely selected to reflect varying degrees of i) income, ii) non-state participation, and iii) modes of regulation adopted by the state. The list of states categorised based on their per-capita income is presented in **Table 1**.

Table 1: Sample States Selected for Analysis

Category	States selected for study
High per-capita Net State Domestic Product (NSDP)	Telangana, Punjab
Medium per-capita NSDP	Himachal Pradesh, Tamil Nadu
Low per-capita NSDP	Rajasthan, Uttar Pradesh

2.2. Stakeholder Interviews and Sample Sizes

As mentioned, to understand the status of on-ground implementation of the government regulations related to non-state actors in the school education sector, we interviewed some key-stakeholders to understand their perspectives. **Table 2** presents overall sample sizes and period of conducting these interviews.

Table 2 : Interviews conducted with key stakeholders

Stakeholders	Type of stakeholders	Number of interviews	Interview period
School teachers	Private school teachers	32	March-April 2021
	Private school teachers	33	
Private supplementary service providers		19	March-April 2021
Block & District level government officials	Block education officers	16	March-April 2021, July-August 2021
	District education officers	7	
State level government officials	Senior officials from education departments of 5 states	8	August-November 2021
National level officials	<ul style="list-style-type: none"> • Former senior officials from the Ministry of Education, Government of India. • 2 Professors, NCERT • National Convenor, RTE Forum • Employees from Akshaya Patra Foundation, and Teach for India 	7	

- **National and state-level government officials:** We had detailed discussions with eight senior officials from the state education departments in Himachal Pradesh, Rajasthan, Telangana, Andhra Pradesh and Chhattisgarh, along with former senior officials from MoE. Interviews were also conducted with two senior officials from National Council of Educational Research and Training (NCERT) to understand regulations related to textbook publishing and curriculum development in India for non-state actors.

- **BEOs and DEOs:** To understand the process of monitoring of non-state actors with regard to compliance of regulations, and the challenges faced by the government officials, we interviewed BEOs, DEOs, and Panchayat Elementary Education Officers (PEEOs - in case of Rajasthan). In total, we interviewed 3 PEEOs, 13 BEOs, and 7 DEOs from four states (**Table 3**).

Table 3 : BEO and DEO Interviews: Sample Size

States	BEOs	DEOs
Himachal Pradesh	4	2
Punjab	4	2
Rajasthan	3 (BEO) + 3(PEEO)	2
Uttar Pradesh	2	1
Total	16	7

- **School teacher interviews:** Despite a lot of responsibility, the voices of teachers are often missing in research on school education. The study thus sought to capture teacher insights with respect to regulatory and monitoring mechanisms that govern schooling, through teacher interviews across the six states. In total over 60 interviews were conducted with teachers and head-teachers from both government and private schools. The final sample included 22 men and 11 women in government schools, and 12 men and 19 women in private schools. The ratio of permanent to contractual teachers was 10:13 in private schools while in government schools all but one teacher was in a permanent post (32:1). The questions asked of the teachers covered aspects related to regulations and monitoring of non-state providers of supplementary services including mid-day meals and textbooks; perceptions of government school teachers regarding private schools; private schools' compliance with RTE norms and other government regulatory standards; grievance redressal mechanism for both government and private school teachers, and parental involvement in monitoring. **Table 4** provides a detailed breakdown of the number of teachers interviewed. With respect to the schools, a majority (19) were private-unaided, 8 were private-aided, 2 were minority unaided and there were one each from public-private partnership, minority-aided and NGO-aided.

Table 4 : Teacher Interviews: Sample Size

States	Category of Teacher				Total teachers
	Government School Teacher	Government Head Teacher	Private School Teacher	Private School Head Teacher	
Himachal Pradesh	5	1	5	2	13
Rajasthan	3	2	3	2	10
Tamil Nadu	4	1	4	1	10
Uttar Pradesh	5	1	4	2	12
Punjab	4	1	4	1	10
Telangana	4	2	3	1	10
All 6 states	25	8	23	9	65

- **Private supplementary service provider interviews:** In-depth interviews with private providers of different supplementary services were conducted to better understand the de facto functioning of these mechanisms. In total 19 private service providers were interviewed, 5 each from Himachal Pradesh, Punjab and Rajasthan, and 4 from Uttar Pradesh. In addition, to understand the perspective of private teacher providers, we had a semi-structured telephonic conversation with a staff member from Teach For India (TFI), a non-profit organisation that provides additional teaching support in government and private schools. Similarly, a senior member of the Akshaya Patra Foundation, was also interviewed to understand regulatory processes for private MDM providers.

2.3. Secondary data

Two all-India representative databases have been used for analysis, which are explained below.

- **Unified District Information System for Education (UDISE) Plus:** UDISE plus, earlier known as UDISE, is a management information system (MIS) under the Ministry of Education (MoE) that is used to collect annual data from all registered schools in India, including government, private-aided and private-unaided. The key indicators covered in U-DISE Plus include enrolment in every grade from different socio-economic categories, infrastructure facilities available in schools, teachers across qualifications and a few others.
- **Household survey on education, National Statistical Office (NSO):** The NSO, under the Ministry of Statistics and Programme Implementation (MoSPI), GoI, has been conducting household surveys on social consumption that include education at regular intervals for many years. The latest round of the NSO survey titled “Household Social Consumption on Education in India” was conducted between July 2017 and June

2018. It is a pan-India survey with an adequate sample size to allow for state-level representation. The sample includes 64,519 rural households from 8,097 villages and 49,238 urban households from 6,188 blocks surveyed all over India. The unit-level data of this survey has been analysed to estimate average out-of-pocket expenditures incurred by households for school education in India.

2.4. Limitations of the Study

- **Challenges in collecting field information during COVID:** Getting responses from teachers and frontline officials (Education department officials at block and district levels) via telephonic or email surveys was extremely difficult during the study period, as an overwhelmingly large share of the population was either suffering from COVID or there were fatalities in their families. In most of the states considered in the study for field work, there was lockdown for different durations of time, which made it difficult to conduct physical interviews as well. Thus, it required multiple visits to conduct the interviews.
- **Limited interviews with officials at the state education departments:** Appointments for physical meetings with senior officials at the state were not possible due to the COVID-related emergency situation. To account for this, an online survey questionnaire was prepared and sent to them. However, even after multiple follow-up attempts, response to this survey was not received. Thus, one-on-one conversations were requested. Eventually we were able to speak to a relatively fewer number of state level government officials than was originally planned.

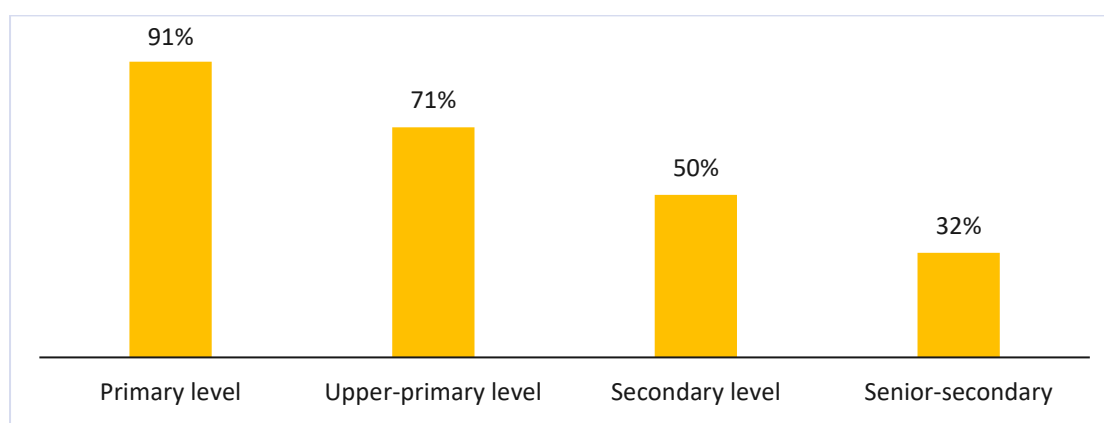
3. Growth of Non-State Provisioning in School Education

This section presents an overview of the status of school education in India and the growth of non-state providers. We first look at access to school education, and whether it has been equitable across different sections of the society. Next, we look at the growth in non-state provisioning of schools in the country, and finally, we highlight some of the issues related to the current nature of non-state provisioning.

3.1. Access to School Education beyond Elementary, is Still Considerably Low

Across the country, many children are still unable to access schooling even at the elementary level. As noted by the NEP, 2020, around 3.2 crore children are still out of school. This figure is probably a lot higher, as many more children attend school very irregularly and hence are virtual drop-outs (Bhatty, Saraf, & Gupta, 2017). This is despite the fact that over the last two decades, there has been considerable improvement in access to primary (Grades 1-5) education in India. According to UDISE Plus data, the Net Enrolment Ratio (NER)¹³ at the primary level was 91.4 percent in 2019-20. However, NER at the secondary (Grades 9 and 10) and senior-secondary (Grades 11 and 12) levels is much lower. At the secondary level for instance, the NER stood at 50.2 percent, indicating an area of concern (Figure 1).

Figure 1 : Net enrolment rate across levels of school education, All India, 2019-20(%)

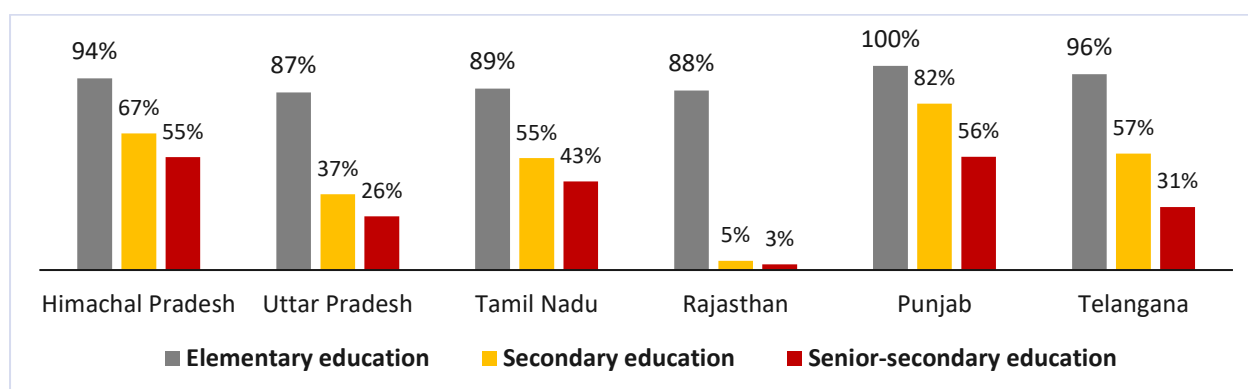


Source: UDISE Plus, 2019-20. Available online at: <https://udiseplus.gov.in/#/Publication>

¹³ Net enrolment rate (NER): Children enrolled at a particular level of school in the official age-group defined for that level, as a proportion of total children in that age-group. The age-groups for calculation of NER are: (a) Primary: 6 to 10 years, (b) Upper-primary: 11 to 13 years, (c): Secondary: 14 to 15 years, and (d) Senior-secondary: 16 to 17 years.

There is however, considerable variation in access across regions, social groups and economic status of households. While inter-state variation in access to elementary education (Primary and Upper-primary together) is relatively less, when it comes to secondary and senior-secondary levels, the differences are starker. For instance, while 56 percent children in the 16 to 17 years age group attended senior-secondary grades in Punjab in 2019-20, the same proportion for Uttar Pradesh and Telangana were much lower at 26 percent and 31 percent, respectively. (Figure 2).

Figure 2 : Net enrolment rate by levels of school education across six sample states, 2019-20(%)



Source: UDISE Plus, 2019-20. Available online at: <https://udiseplus.gov.in/#/Publication>

Social Categories and Economic Factors Remain Primary Determinants of Access

Variations in access are also found across social categories. In India, households are officially categorised into four social groups- General (or upper castes), Other Backward Class (OBC), Scheduled Caste (SC), and Scheduled Tribe (ST). For decades, the SCs have suffered from extreme social, educational and economic backwardness due to the practice of untouchability. Similarly, STs who were geographically isolated from the mainstream population, were also deprived of educational opportunities. The category OBC refers to the socially and educationally backward castes, and includes a range of “middle castes” , i.e., neither General castes nor SCs. Access to school education is still a major concern for the socially disadvantaged categories such as SC, ST and OBC. For instance, according to NSS data, which is based on attendance levels, as compared to 64 percent children from ‘General’ category households attending secondary level of education, those from SC and ST were only 55 percent and 52 percent respectively, in 2017-18 (Table 5).

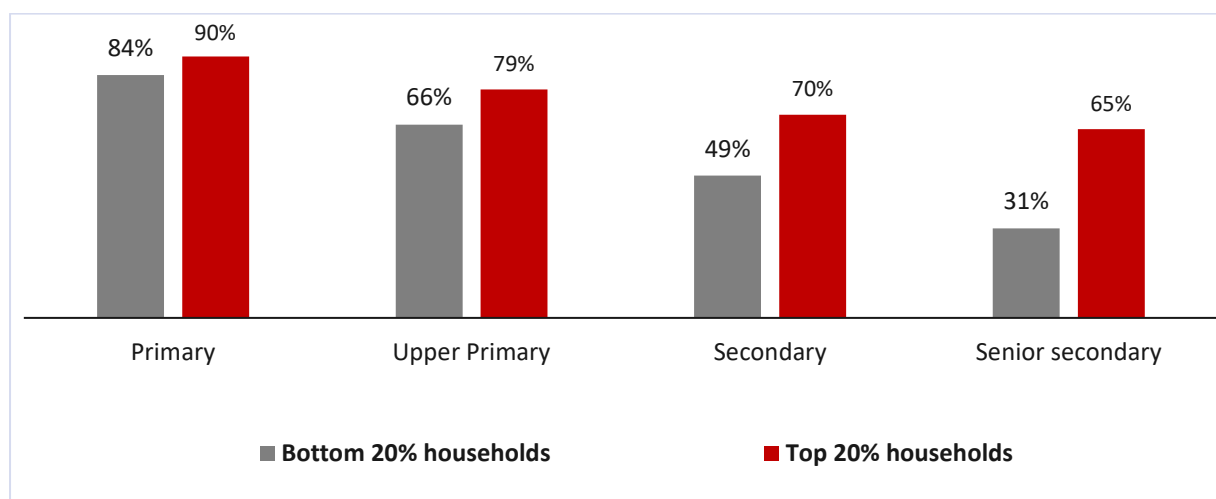
Table 5 : Net attendance rate¹⁴ (%) by education level and social group, All India, 2017-18

Social group	Education level			
	Primary	Upper Primary	Secondary	Senior secondary
ST	86%	70%	52%	46%
SC	86%	70%	55%	30%
OBC	86%	71%	57%	42%
General	88%	76%	64%	52%
Total	86%	72%	58%	43%

Source: National Survey Office (NSO), 75th round, "Household Social Consumption: Education", 2017-18

Similarly, economic background, perhaps the most notable factor determining access, impacts access to secondary education more than elementary. As presented in **Figure 3**, compared to 70 percent children from the top 20 percent households or quintile, in terms of economic status, only 49 percent of the bottom 20 percent households attended secondary grades in the year 2017-18. Again, as compared to 65 percent children from the top quintile, only 31 percent from the bottom quintile had attended senior-secondary grades.

Figure 3 : Net attendance rate (%) by education level and economic status of households, All India, 2017-18



Source: National Survey Office (NSO), 75th round, "Household Social Consumption: Education", 2017-18

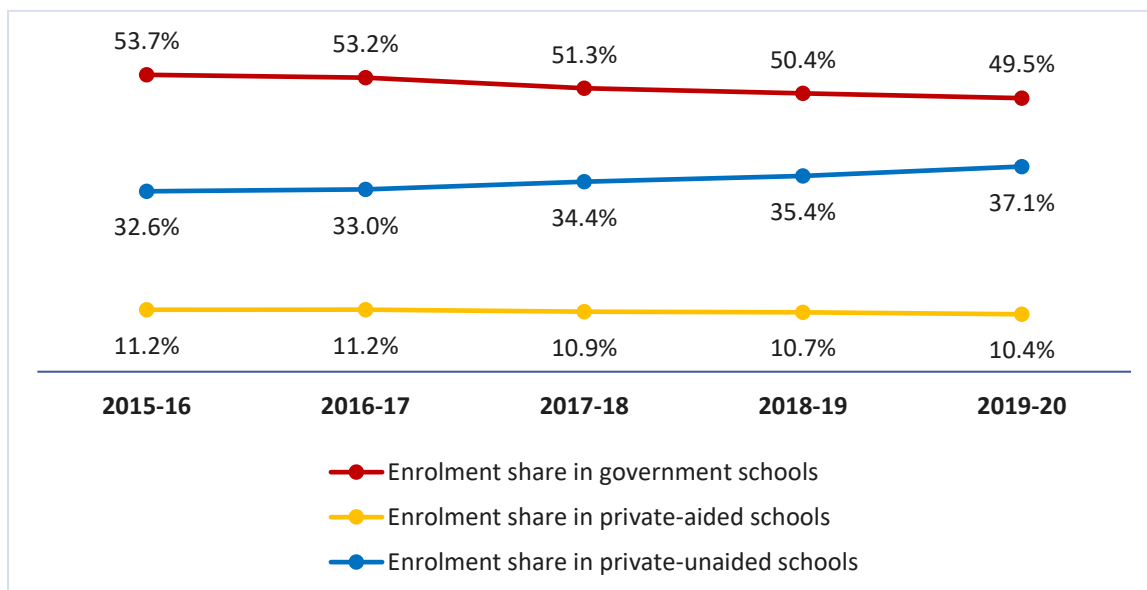
¹⁴ Net Attendance Rate is defined in a similar manner as net enrolment rate in terms of age-groups of children for different levels, however it considers children attending school in the numerator instead of children enrolled.

3.2. Non-State Provisioning of Schools Has Increased Steadily over the Past Decade

While the State is still the primary provider of school education in India, both in terms of number of schools and enrolment, the last decade has seen an increasing shift towards private-unaided schools. Lack of adequate investment in State-run schools, resulting in a thin spreading of resources, has impacted the quality of education provided in State-run schools. State-capacity, including lack of adequate human resources, has also had an adverse impact on the functioning of State schools.

Official data reflects these trends. During the last decade, the number of private-unaided schools has increased at a faster pace than government schools. Between 2013-14 and 2019-20, almost three times more private schools were registered than government schools. This has led to a gradual increase in the proportion of students enrolled in private schools as can be seen in **Figure 4**. The share of enrolment in private-unaided schools had increased from 32.6 percent in 2015-16 to 37.1 percent in 2019-20.

Figure 4 : Net attendance rate (%) by education level and economic status of households, All India, 2017-18



Source: UDISE Plus, 2019-20. Available online at: <https://udiseplus.gov.in/#/Publication>

Note: Private-aided school is a recognised school owned by private management, but managed by government and receiving grants from state or central government.

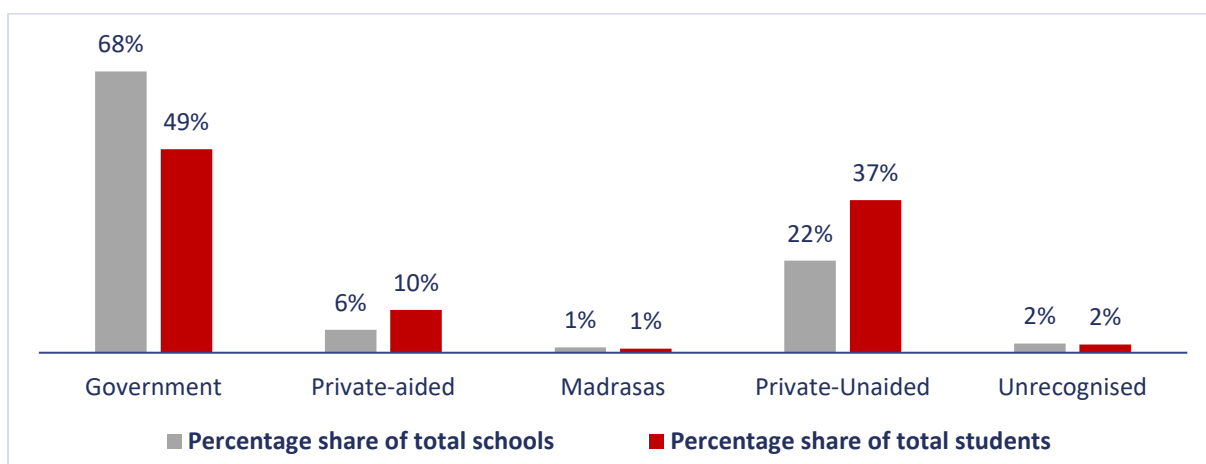
The latest available data (UDISE+, 2019-20), thus shows that of the total 1.51 million schools in India, while slightly more than two-thirds or 68 percent are State-run, enrolment in these schools constitutes only 49 percent of total school enrolment in the country. Private-unaided schools, which are the second most common

form of management at 22 percent (**Figure 5**), have 37 percent or a little over one-third of the total enrolment. In absolute terms, of the 264.5 million students in the country, 98.2 million are enrolled in private-unaided schools. These are followed by private-aided schools at 6 percent of total enrolment. While detailed data for un-recognized schools that operate without obtaining recognition from the government is not available, it is estimated that they might account for a fair share of enrolment. The actual number of children enrolled in these unregulated schools is expected to be far higher as there is no accurate official data on the size of the ‘informal sector in school education’, much like other informal sectors of the economy (Bose, Ghosh, & Sardana, 2021).

The higher density of enrolment in private schools, or the lower density in State-run schools, is partially explained by the fact that State schools are scattered over a wider geographic area with many schools in sparsely populated areas. The goal of the government to reach every child has meant that schools have been opened in far flung areas, where enrolment in some of these schools may be very low. As a result, there are 400,000 State-run schools with lower than 50 children enrolled in them.¹⁵ Private schools tend to be concentrated more in urban and semi-urban areas with a larger number of children per school, as the economic viability is higher with a larger number of children. At the same time, higher density in private school enrolment, is also caused by a growing preference for private schools across the country along with rising enrolment. Moreover, our discussion with members of RTE Forum, indicated that a policy of merging small government schools resulting in the subsequent closure of several small schools in last few years, has also impacted the shift of children to private schools.

¹⁵ <https://indianexpress.com/article/opinion/columns/falling-government-school-enrolment-is-alarming-and-it-needs-to-be-addressed-soon-7397329/>

Figure 5 : Distribution of total schools and students across types of school, All India, 2019-20



Source: UDISE Plus, 2019-20. Available online at: <https://udiseplus.gov.in/#/Publication>

Comparing across levels of education, data suggests that a relatively higher proportion of students that are enrolled in private-unaided schools, are at the secondary and the pre-primary levels. As far as secondary schools are concerned, the primary reason is that fewer children from the lower economic strata access education at secondary and higher levels. Those of the higher economic strata that go to secondary schools, tend to prefer private-unaided schools. There are also fewer government schools offering secondary education (60,000 private-unaided schools as opposed to 52,000 government schools in 2019-20). For pre-primary education, the government runs “Anganwadi centres’ that serve as day care and nutritional support centres for pre-school children. These centres are not usually attached to schools and come under the purview of the women and child ministry, and not the education ministry. As such the education component is not their focus either. Government schools thus tend not to have pre-primary sections attached to them. This gap has been filled by private providers. However, private pre-school facilities are largely an urban phenomenon and typically unaffordable by children accessing government schools. It is only recently that pre-primary education has been formalised as part of the school education system in the National Education Policy (NEP) released in 2020. It remains to be seen when it will become the norm in government schools and how it alters the participation in pre-primary education in private schools.

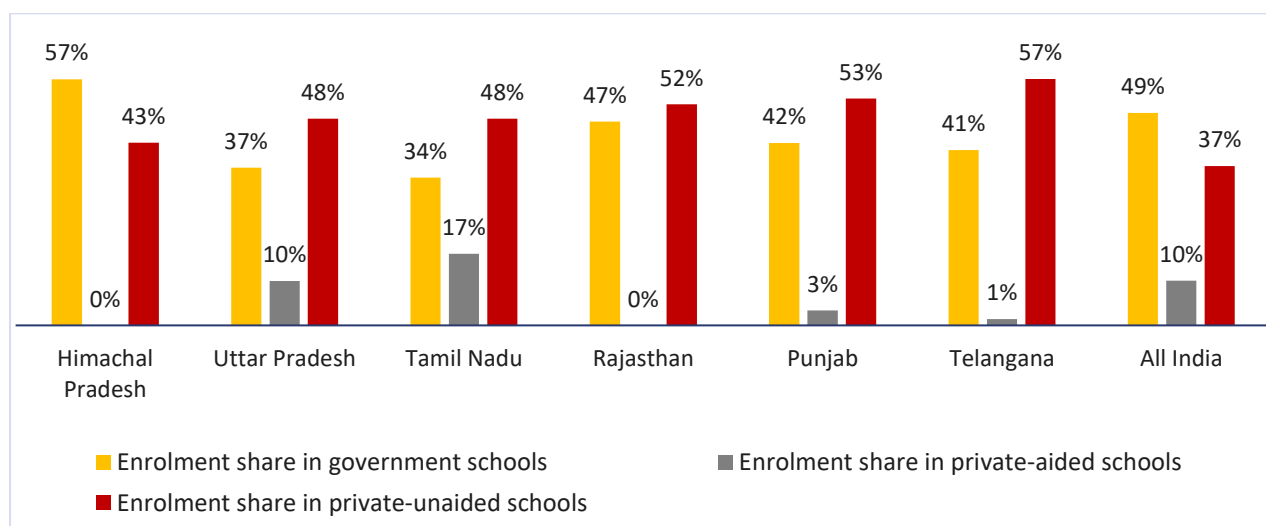
State-wide variation in non-state provisioning of school education

While the increase in non-state provisioning has taken place across the country, there is significant variation across states, as seen through our sample of six states. In Uttar Pradesh, Rajasthan, and Punjab, for instance, almost a third of the schools are privately managed. In contrast, in Himachal Pradesh the share of private

schools stands at less than half or 15 percent. As with the overall trends, in 5 of the 6 sample states, more private-unaided schools have come up than government schools between 2016 and 2019. The exception is again Himachal Pradesh, where a similar number of government and private-aided schools were added in this period. As a result, in Himachal, despite the increase in private school enrolment, a higher proportion of students are enrolled in government schools than private-unaided schools, unlike the other five sample states (Figure 6).

The reasons for Himachal showing a better record of enrolment in State-run schools can be attributed to multiple factors including the higher public investment made by the state in education. Himachal is one of the few states that has consistently shown a higher per-child investment as compared to many other states including Tamil Nadu and Rajasthan (Mri20) In addition, Himachal has also adopted governance models built on greater participatory processes reflecting local needs. In a study of the primary school education systems in Himachal Pradesh, (Mangla, 2015) found that a critical factor in Himachal Pradesh’s success was what he termed as the “deliberative model” of governance –where people’s participation was encouraged and policies were adopted keeping in mind the local context.

Figure 6 : Share of total enrolment across type of management of school in 6 States during 2019-20 (%)

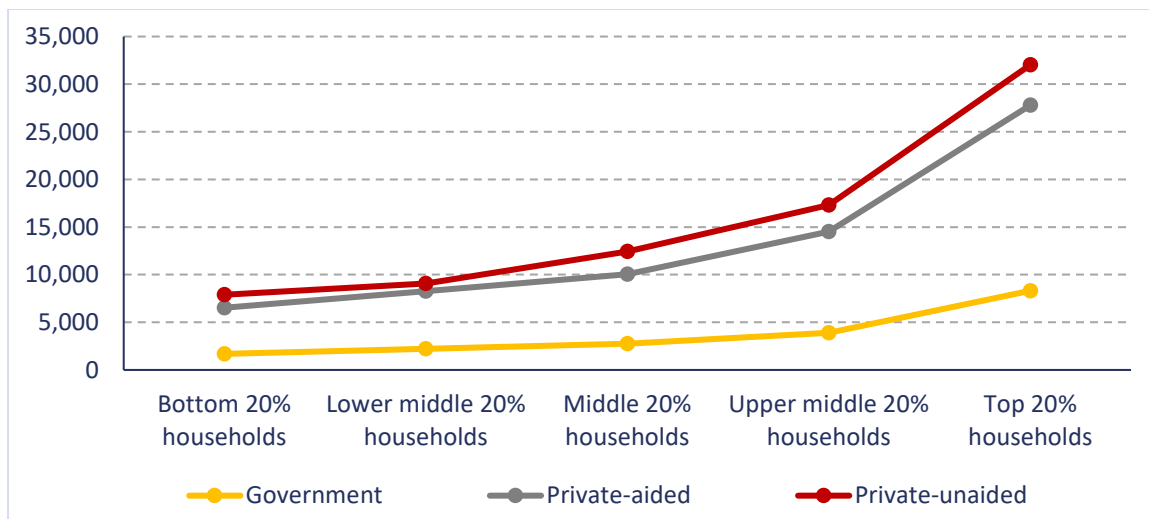


Source: UDISE Plus, 2019-20. Available online at: <https://udiseplus.gov.in/#/Publication>

3.3. Cost of Private Schooling

As seen in **Figure 7**, below, the average cost of government schooling is significantly below that of private schools - both private aided and private unaided. In the case of government schools in India, the RTE Act, 2009 mandates free elementary education to all children in the 6 to 14 years age-group, while at the secondary and senior secondary levels a subsidised fee is charged. Thus, average spending on government schooling does not vary much across the household quintiles, except in the top quintile primarily because of expenditures incurred in private tuitions. For children attending government schools the gap in average spending between the top and bottom quintile is thus found to be around ₹ 6,600. However, for private school spending, the rise is much steeper as one moves from the fourth to the top quintile of households. Nationally, for school education as a whole irrespective of the level, the average expenditure on a child attending private school is almost ₹ 24,000 more for a household in the top quintile¹⁶ than that in the bottom quintile. This is mainly because of considerably higher expenditure on course fees as the households become richer, indicating preference for elite or high-cost private-unaided schools by them. The top quintile households also spend relatively higher on private tuition, even though the increase is not too stark compared to lower quintiles.

Figure 7 : Per-child expenditure across household quintiles created based on monthly per capita consumption expenditure, by school types, 2019-20 (Rs. per student per annum)



Source: National Survey Office (NSO), 75th round, “Household Social Consumption: Education”, 2017-18

Note: (1) Per-child expenditure refers to average expenditure incurred on those children attending schools from pre-primary to higher-secondary levels. (2) Private-unaided schools include low-cost private schools as well.

¹⁶ In the NSO education survey dataset, all the households are divided into five quintiles of 20 per cent each based on their monthly per-capita consumption expenditures.

Within the different types of schools, the per-child expenditure incurred by households is highest for private-unaided schools, followed by private-aided schools and the lowest for government schools (**Table 6**), with the difference across the types of schools being significant. Therefore, on average, the per-child expenditure in private-unaided schools is more than six times higher than that in government schools, and in the private-aided schools, it is five times higher. Clearly, government schools are the most accessible option for households in terms of burden on their wallets.

Table 6: State-wise annual per-child expenditures (Rupees per child) by households on school education: Government schools vs. private-unaided schools, 2017-18

State	Government schools	Private-unaided schools	Private-unaided as a ratio of government
Himachal Pradesh	3,344	23,053	6.9
Punjab	3,239	24,292	7.5
Rajasthan	1,727	14,782	8.6
Uttar Pradesh	1,480	9,820	6.6
Tamil Nadu	1,740	24,664	14.2
Telangana	1,838	20,110	10.9
All India	2,608	17,147	6.6

Source: National Survey Office (NSO), 75th round, "Household Social Consumption: Education", 2017-18

Note: (1) Per-child expenditure refers to average expenditure incurred on those children attending schools from pre-primary to higher-secondary levels. (2) Private-unaided schools include low-cost private schools as well.

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Rise in Low-Fee-Private Schools (LFPS)

Irrespective of the higher costs of private schooling, there has been a gradual increase in enrolment in private schools. As evident from the above analysis, the gap in average expenditure between private and government schooling, is relatively less for the bottom 60 percent of the households, which indicates that majority of these households are sending their children to the low-fee private schools. Multiple studies have shown that the majority of the private schools in India fall in the category of low-fee or low-budget private schools (CSF, 2020).

LFPS, while not an official category, have been spreading widely in the last few years, creating a large informal and unregulated sector within education. Another study (Kingdon, Geeta Gandhi, 2017) observed that affordability is a key factor behind the increasing preference for private schools as they are expanding in numbers. The study noted that the increasing number of low-fee schools, which are accessible to the poor, who prefer these schools over government schools, had been leading to an exodus from public to private schools.

However, there are some contrasting views regarding the affordability aspect of these schools. Research in the past has noted that although these schools were categorized as low fee, they are not always affordable for the impecunious (Härmä, 2011); (Srivastava, 2015). A survey of families across 13 villages in the state of Uttar Pradesh, found that while most parents favoured LFP schools over public schools, indigence prevented them from accessing these private schools (Härmä, 2011). Hence, these institutions cannot be always be considered “pro-poor or equitable”.

Moreover, the quality argument of the parents for preferring private schools might hold true for a relatively smaller proportion of private schools, but is not necessarily the case for the LFPS. Compliance with government norms regarding input standards becomes extremely difficult for LFPS to follow, and in the process of reducing costs, the quality of education is often compromised. Many of them have been able to reduce operating costs by paying minimal salaries to their teachers. Often, these teachers are not professionally qualified and hired for short terms (Srivastava, 2015); (De, Noronha, & Samson, 2002); (Nambissan, 2010), which directly impacts quality of teaching. Another concern in this context has been the excessive focus of these schools on examination results, while ignoring holistic development of children through sports, or by creating libraries, laboratories, and other co-curricular activities. Studies have argued that special interest groups, backed by influential commercial and political entities “enmeshed in transnational networks” have been lobbying for LFPS as a viable solution for making education accessible to the poorest of the poor; as well as a lucrative commercial model (Nambissan, 2012); (Jha, 2016). These schools, however, are yet to show any substantive evidence of ensuring equitable access to education. Economizing service to maximise profit, means that the quality of education imparted in these schools does not provide students a “meaningful and holistic education”.

3.4. Equity Concerns with Private Schooling

With the gradual increase in enrolment in private-unaided schools, it is important to understand how inclusive these schools have been, in terms of enrolment of students from all socio-economic sections of society.

Private Schools are Relatively Less Inclusive in terms of Representation of Children from Socially Disadvantaged Sections

Looking at private school enrolment across social groups, it is observed that a considerable share (44 percent) belongs to the OBC category, followed by 27 percent from General, 19 percent from SC, and 10 percent from ST. Even though OBCs are well represented in private schools, there is relatively greater representation of General category students, and far less from SC and ST backgrounds. Among the six sample states, while private schools in Uttar Pradesh and Tamil Nadu seem to be more diverse, those in Rajasthan, Tamil Nadu and Punjab have higher shares of enrolment from the General categories who are socio-economically more privileged. For instance, while 36 percent of total school-going children in Punjab belonged to SC category, they formed only 15 percent share in total private school enrolment in the state during 2019-20 (Table 7).

Table 7: Distribution of students across social group: Overall and in private-unaided schools

	General	OBC	SC	ST	Total
All India					
Students enrolled in private-unaided schools	37%	45%	13%	5%	100%
All students	27%	44%	19%	10%	100%
Himachal Pradesh					
Students enrolled in private-unaided schools	63%	16%	15%	5%	100%
All students	54%	14%	26%	6%	100%
Punjab					
Students enrolled in private-unaided schools	71%	13%	16%	0%	100%
All students	49%	15%	36%	0%	100%
Rajasthan					
Students enrolled in private-unaided schools	24%	54%	15%	7%	100%
All students	17%	49%	20%	15%	100%
Uttar Pradesh					
Students enrolled in private-unaided schools	27%	52%	20%	1%	100%
All students	20%	53%	25%	1%	100%
Tamil Nadu					
Students enrolled in private-unaided schools	6%	78%	15%	1%	100%
All students	4%	72%	23%	1%	100%
Telangana					
Students enrolled in private-unaided schools	33%	49%	11%	6%	100%
All students	23%	50%	17%	11%	100%

Source: UDISE Plus, 2019-20. Available online at: <https://udiseplus.gov.in/#/Publication>

Further, as will be seen below (section 3.5 a), private schools, while investing in infrastructure including ICT, have been slow to install ramps, another indication of their tardy approach towards equity. As evident from latest data, the availability of ramps is much less in private schools than in government schools. As compared to 78 percent government schools, only 45 percent private schools had ramps in 2019-20.

In 2019-20, as compared to 78 percent government schools, only 45 percent private schools in India had ramps (a sloping path that can be used instead of stairs to get from one place to a higher or lower place), which are essential for physically disabled children.

COVID-19 Pandemic and the Struggle to Access Private Schooling for Children from Economically Disadvantaged Backgrounds

The economic downturn and steep rise in poverty and unemployment levels in India, fuelled by the COVID-19 pandemic, highlighted the vulnerability of a large section of the population. At the backdrop of this, a recent survey of more than 7,000 government schools conducted across the country in September-October 2021, found several parents shift their children to government schools in 2021-22 academic session, especially in the rural areas (ASER, 2021). The survey found that government schools in India have recorded a considerable increase in enrolment rates while private schools' enrolment rates have declined, as compared to pre-pandemic rates. According to the findings, between 2020 and 2021, private school enrolment dropped, but there was a considerable increase in government school enrolment across all age groups, from 66.4 percent in 2020 to 71.9 percent in 2021 (ASER, 2021).

Loss of incomes induced during the pandemic, and closing of some private unaided schools (UNICEF, 2021), coupled with free resources offered by government schools, were cited by government school teachers as some of the reasons for such a shift. Another reason cited by the ASER survey is the migration of families back to rural areas due to loss of jobs and the subsequent increase in demand for government schools. This shift in enrolment pattern reinforces the importance of public educational institutions as they ensure steady availability of basic services like education even during emergencies while absorbing economic shocks.

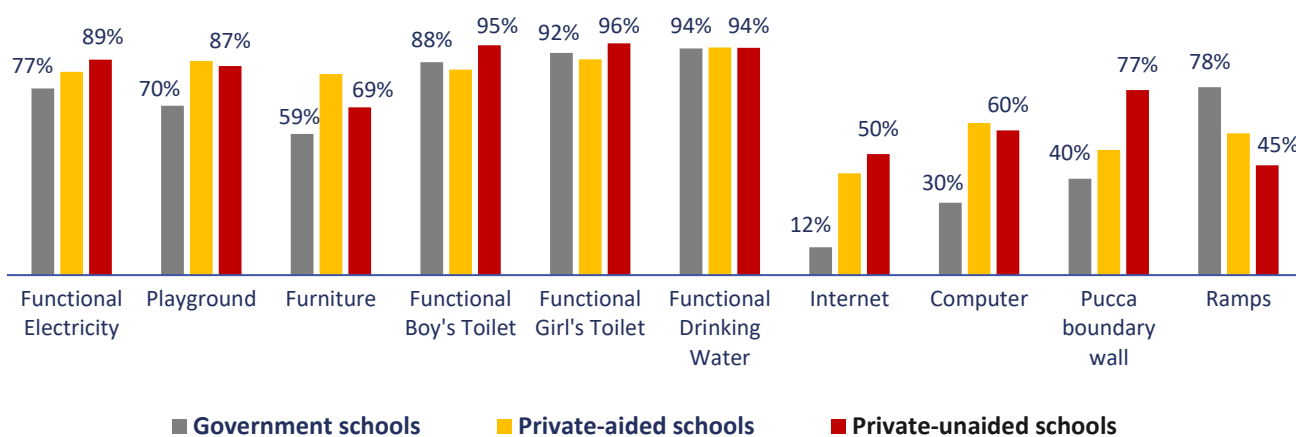
3.5. Preference for Private Schools

As evident from the analysis above, while there are certain issues with regard to the nature of non-state provisioning of school education, parental preference for private education has nevertheless been steadily growing. The growth in private schools is clearly a reflection of this increase in demand for them. Two primary reasons cited for the shift in demand is, a perception of better quality and English as a medium of instruction. The latter - a reflection of the non-state being a status marker where English signifies higher status - and comes with a higher price. In the next section, we examine some of the indicators of quality to assess the extent to which non-state schools in fact represent better quality education.

a. Infrastructure

U-DISE Plus data shows that overall, private schools are relatively better-off than government schools in terms of availability of certain infrastructure facilities (**Figure 8**). For instance, a considerably higher proportion of private-unaided schools have playgrounds, boundary walls, furniture, and functional electricity connections. However, in terms of availability of basic facilities such as functional toilets for girls and boys, and drinking water, there is not much difference between government and private schools. The availability of ramps however, is much less in private schools than in government schools. While 78 percent government schools had ramps, the proportion in private schools was 45 percent only. On the other hand, in the case of ICT infrastructure, while the coverage is low across the board, private-unaided schools are in a better situation. For instance, compared to 30 percent government schools in the country, 60 percent private-unaided schools have computers. Similarly, internet penetration is even poorer at 12 percent in government schools, compared to 50 percent in private-unaided schools.

Figure 8 : Percentage of schools with availability of infrastructure facilities by management type, All India, 2019-20



This trend is reflected in the six states as well, with a few exceptions. A higher percentage of private-unaided schools have functioning electricity, internet, computers, and functional toilets. However, in Punjab, except for ICT based physical infrastructure, there is hardly any difference between government and private schools in availability of most other facilities, and both categories of schools have very high coverage. In terms of availability of computers and internet connections, there is considerable state-wide variation among private-unaided schools. For instance, as compared to 36 percent private-unaided schools in Uttar Pradesh, 90 percent in Tamil Nadu have computers. Internet connections in private schools also vary from 28 percent in Uttar Pradesh to 81 percent in Punjab. Such variation in infrastructure availability is reflective of the variation in the standard and quality of private schools in these states.

In terms of availability of computers and internet connections, there is considerable state-wide variation among private-unaided schools.

b. Teachers (including non-teaching duties)

Discussions with government officials at the state level revealed that many parents tend to prefer private schools because of the relatively better availability of teachers during school hours. Since government school teachers have additional administrative responsibilities, such as election duties, examination duties, census enumeration, data collection etc., they are unable to provide adequate time towards their teaching responsibilities. This is over and above the 17 percent vacancy in the sanctioned posts for teachers in government schools at the national level in 2020-21. In this context, government officials from Himachal Pradesh and Rajasthan during the field interviews, expressed concern over how engagement of the teachers in administrative work impacts teaching in government schools. Similarly, a PEEO from Rajasthan stated “*I think human resource has been a big challenge with the government. Other departmental responsibilities such as election duty, board exams and various surveys, are assigned to the teachers where they have to spend a lot of days in a year*”. The private sector does not have similar responsibilities and hence is better placed to provide greater time to students and teaching. What is unclear the extent to which this advantage in fact translates to better learning outcomes (Wadhwa, 2009).

c. English medium

A large section of parents prefer to enrol their children in schools where the medium of instruction is English, which tends to be the case in most private schools. The discussions with teachers and government education officials highlighted that most parents believed that being fluent in English is important for securing livelihood opportunities. As stated by a government education official from Rajasthan *“One of the main reasons for the increasing demand for private schools is the fact that the medium of instruction is English.”* The official also stated that the Rajasthan government has recently introduced English medium in a certain selected number of government schools, leading to a sudden spike in the number of applications for admission.

The latest data from UDISE Plus (2019-20) shows that the proportion of professionally untrained teachers in private schools was 19 percent as opposed to 6 percent in government schools.

Based on this overview of the education sector, the spread of non-state schools, the inroads they have made across social groups, and the costs implied, it is clear that the central challenge remains that of getting the poor and the marginalized, into the loop of education, and the capability of the non-state to rise to this particular challenge raises serious doubts. The reasons for this are:

- Bringing children into school requires a deep understanding of the reasons for their being out of school. This information is neither available with the private sector, nor does it have the capability or inclination to get it. The NGO sector is better placed to address this issue as many of them work with communities on the ground. However, anecdotal evidence suggests that they have been unable to sustain a steady flow of funds to keep their engagement in education going in the way that the private sector is (Sadagopan & Kamath, 2018).
- Educating first generation learners, who do make it to school, is also a challenging job that requires specialized skills that are not easily available with teachers that are not adequately trained. Unfortunately, private schools, in their bid to reduce costs tend to hire teachers with lower levels of training (Goyal & Pandey, 2009). The latest data from UDISE (2019-20) shows that the proportion of professionally untrained teachers in private schools was 19 percent as opposed to 6 percent in government schools.
- The need to show and maintain ‘results’ tends to orient the pedagogy and classroom activities towards those who can boost results, and away from those who may not. This does not favour the marginalized

child, who has fewer home resources and academic support and may struggle with differences between medium of instruction and the language or dialects spoken at home. A similar trend is noticed with the rush towards digitalization, where those with access to technology can, and are, being taken ahead, but those without, are being left behind. Along with the children who do not make it to school at all, the invisibilization of excluded children has taken on a heightened form with the entry of the non-state in education. The focus is instead on those who are in the system and can keep up with the pedagogy and technology.

- The inability of the private sector to engage constructively with the State system that is leading to a dismantling of State structures and mechanisms in favour of greater space and flexibility for the non-state, has meant that standards and norms run the danger of falling by the wayside, and basic goals of education get side-stepped.

None of the above implies that the private sector and the non-state sector as a whole, cannot play a positive and constructive role in education. The crucial issue is of regulating their involvement through State mechanisms that are aligned with the broader goals of education. Further, ensuring that the non-state actors do not develop, as stated above, a “hegemony” and stronghold on education, such that the marginalized are neglected. The central question, then, is: What are the structures and mechanisms for regulation of the non-state sector in India and how do they measure up to the needs of the system? In other words, is the regulation of the non-state designed in a manner that allows it to fulfil the missing capacity gaps of the State system while simultaneously keeping in mind considerations of equity and accountability? In the next section we look a little deeper into these questions.

Along with the children who do not make it to school at all, the invisibilization of excluded children has taken on a heightened form with the entry of the non-state in education. The focus is instead on those who are in the system and can keep up with the pedagogy and technology.

4. The Importance and Need for Regulation

The discourse on regulation of education in India is at a very incipient stage. Therefore, in common parlance, the word regulation is understood in multiple ways by multiple actors, including government officials. For instance, it could refer simply to the entry (recognition) or exit (withdrawal of recognition) of private actors into (or from) the education field, and thereby refer to ‘recognition’ as the primary purpose of regulation. Or it could refer to just one aspect, such as ‘financial audits’, or ‘regulation of fees’, with no reference to other goals of education.

In India, the emergence of the regulatory State is linked to the economic liberalisation of the 1990s leading to State withdrawal in domains which were previously under exclusive control and financial globalisation including the pressure of international agencies and multilaterals. For the most part, regulatory institutions were limited to core infrastructure sectors (airports, electricity, telecoms etc.) or economic areas such as securities, banking, finance, insolvency and real estate projects (Singh A. , 2022). Over time however, there was an increase in admission of private actors into areas of social life. For the purpose of this report, we focus on this aspect – namely regulatory control over markets and private enterprise for social and economic objectives (Singh A. , 2022). The justification of social regulation, which deals with matters including health, safety, consumer protection and education tend to focus on two market failures. One, is information asymmetry wherein individuals often do not have adequate information on the quality of the services provided and two, is spill-over effects or externalities which are associated with public goods, like education (Kapur & Khosla, 2019) (Ogus, 2004).

For education too, as mentioned in **Section 1**, recent years have seen a significant entry of the private sector in the provisioning of education – including in managerial and agenda setting roles. Education is envisaged as a public service in India given its significant externalities in development and democratic life and thus the Constitution of India has made it clear that it is to be treated as a ‘charitable’ and non-commercial service. The traditional interests of the private sector including their incentives and cultures of functioning, however, may not be aligned to the interests of public service delivery as they suppress the externalities related to larger education goals. This is especially true from the perspective of equity and diversity calling for the need to ensure access to quality education to all and protect parents from the commercialisation of education – areas of concern often raised with private provisioning.

Assessing private sector involvement requires having a robust and well- functioning regulatory system. Such a system would ensure entry of actors based on criteria that are in alignment to the goals of education, and a monitoring framework that ensures that the provision remains aligned to these goals. Further, such a system, in order to be effective, would need sufficient state capacity at different levels of governance, with the objectives of monitoring pre-determined goals in a transparent and participatory manner, involving all stakeholders.

Regulatory structures aside, many of the challenges of regulation need to be looked at not just in terms of the institutions involved but in the larger politico-economic context in which they function including the challenges of governance and state capacity within the Indian State. India's regulatory environment has often been criticised as over regulated yet under governed. In other words, while on the one hand, there are several tedious, complex and often opaque rules and procedures that non-state actors need to follow, yet the actual effectiveness of the regulation remains weak due to lack of concurrent supervision. As the latest Economic Survey 2020-21 noted, while India scores better when it comes to setting regulation standards compared to its foreign counterparts, "undue delays, rent-seeking, complex regulations and quality of regulation" severely impact the efficacious implementation of the regulatory framework. Similar findings on India lagging behind in regulation effectiveness were found in the World Justice Project's 'World Rule of Law Index' which ranks countries' regulation implementation based on compliance to due processes, effectiveness, timelines etc as well as the World Bank's Regulatory Quality Index (Economic Survey, 2020-2021). In effect, if we think of a regulatory system as having two parts – one that prescribes standards and norms and another that ensures they are complied with, the regulatory system, while fairly robust on the first, is sorely lacking on the second.

As we will see in the sections that follow, several of these challenges are found in regulation of the non-state in education. Whether it is the argument of over-regulation with respect to entry barriers, or a fragmented bureaucratic structure resulting in weak compliance and monitoring of the rules and norms, beyond ensuring fulfilment of those related to entry or recognition. For instance, while the public information on regulation includes 'operational guidelines for running schools' and 'rules for financial accountability', the extent to which these are being checked in practice, is a function of the concurrent monitoring process. However, it appears that this crucial aspect of monitoring is not included in the common understanding of the term 'regulation.' Exit of any non-state actor, if and when it occurs, appears to be based on "complaints" arising from students, parents or civil society organizations, rather than an on-going system of checks. However, before delving into these issues, it is useful to look at the existing structures of regulation for education in India.

Architecture/ Structural arrangements for Regulation in Education

State control through regulation is usually exercised in two ways. First, it may be exercised through a specialized statutory body set up by law primarily to regulate specific markets or business activities. In addition, the State also actively regulates via a myriad of officials and agencies that undertake surveillance and monitoring through issuing standards, directions, approvals, licenses, registrations, permissions etc. This type of regulatory control is often far more disaggregated and even fragmented and usually rests with various departments within the bureaucracy. Being dispersed, these offices tend to be less powerful (Singh A. , 2022).

For education, the passage of the RTE Act (2010), brought about a radical shift in thinking about minimum standards and norms for quality education within a legal framework. This opened the door for building a regulatory and monitoring system around the legal norms that applied to all schools – State and non-state (with some exceptions). The federal structure of governance that places education in the concurrent list, giving both the Union government and the states, powers over its administration, provides the states with freedom to frame their own rules for the implementation and regulation of RTE requirements. As a result, state-specific RTE rules, now foreground the regulatory system for schools. Moreover, certain states have specific legislations for private educational institutions. The states may also come out with directives and notifications regarding school provisioning from time to time, as long as they do not contravene the RTE Act. These directives, along with court orders in some instances, circumscribe the regulatory framework for schools.

To operationalize these rule and norms, there is a fairly elaborate governance architecture in place. The functions of implementation and regulation are performed at the national level by the Department of School Education (DoSE), under the Ministry of Education (MoE). Similarly, at the state level the responsibility lies with the State Education Departments or Directorates. Thus, the State Education Directorate is responsible for overseeing the implementation of RTE norms, state level legislations, and other state specific directives in certain states on operational issues such as school fees or teacher salaries etc. Below the state level, the district, block and cluster level officials are mostly involved in administration and overall supervision. At the district level, implementation of government regulations for both government and private schools fall under the responsibility of the District Education Officers (DEOs). Below the district, a similar administrative structure at the block level is headed by the Block Education Officers (BEOs). A block is further divided into clusters or nodal centres, which have the corresponding frontline officials in certain states. For instance, in Rajasthan at

the cluster level, there is Panchayat Elementary Education Officer (PEEO) in rural areas, and Nodal Elementary Education Officer (NEEO) in urban areas. The regulatory structure of school education and the key actors involved are presented in **Table 8**.

Table 8 : Regulatory Structure for School Education in India: Key Actors Involved

National level	State level
<p>Union government</p> <ul style="list-style-type: none"> ● Ministry of Education (MoE) <ul style="list-style-type: none"> ○ Department of School Education and Literacy (DoSEL) <p>Statutory body under Union government to monitor and safeguard child rights under RTE Act</p> <ul style="list-style-type: none"> ● The National Commission for Protection of Child Rights (NCPCR) <p>Autonomous body to design syllabus and teacher-training modules, publish textbooks, and conduct research and learning assessments</p> <ul style="list-style-type: none"> ● National Council of Educational Research and Training (NCERT) <p>Education boards to conduct examinations and grant qualifying certificates</p> <ul style="list-style-type: none"> ● Government: Central Board of Secondary Education (CBSE) ● Private: Council for the Indian School Certificate Examinations (CISCE) ● International: International Baccalaureate (IB) <p>Audits of Accounts</p> <ul style="list-style-type: none"> ● The Comptroller Auditor General of India (CAG), which conducts financial audits, compliance audits, and performance audits. 	<p>State government</p> <ul style="list-style-type: none"> ● State Education Directorate or State Education Department <ul style="list-style-type: none"> ○ District Education Offices ○ Block Education Offices ○ Cluster/Nodal Education Offices <p>Statutory body under state government to monitor and safeguard child rights under RTE Act</p> <ul style="list-style-type: none"> ● State Commission for the Protection of Child Rights (SCPCR) <p>Autonomous body under state government</p> <ul style="list-style-type: none"> ● State Council of Educational Research and Training (SCERT) <p>State education boards</p>

As can be seen from the institutional system described above, India does not have an overarching regulatory body for education, like the Ofsted¹⁷ in the United Kingdom, for instance, that can play the role of an independent regulator. The RTE Act, 2009 has mandated the National Commission for the Protection of Child Rights (NCPCR) and the corresponding state commissions to monitor the provisions of the RTE Act. While this does provide an independent platform for monitoring, its links with the education administration are extremely tenuous and hence its impact on bringing about change has been limited. There are also capacity concerns at the Commissions that have made them less than effective.

With these caveats, the next two sections take a deeper look into the regulatory norms and processes, and their compliance, in two broad areas of non-state engagement related to school education: School provisioning and provisioning of Supplementary services.

¹⁷ The Office for Standards in Education, Children's Services and Skills (Ofsted) is a non-ministerial department of the UK government, reporting to Parliament. Ofsted is responsible for inspecting a range of educational institutions, to ensure a high standard of education for all students.

5. School Provisioning: What Regulation Entails for the Non-State Actors

This section examines the **regulatory processes** overseeing the provisioning of schools by non-state actors in India. It includes the regulation of entry and withdrawal as well as **monitoring compliance of the regulatory norms**. This is followed by a look at **state capacity related to monitoring compliance**. The last subsection explores the issue of transparency with respect to regulations.

5.1. Regulatory Processes and Norms

The regulations for non-state actors related to provisioning of schools can be bucketed into three broad aspects: (a) Granting and withdrawal of recognition, (b) Financial and other Norms, and (c) Monitoring Compliance.

5.1.1. Granting and Withdrawal of Recognition

The first point of regulation occurs at the time of obtaining recognition to operate a school, as private school providers are required to obtain a licence to operate subject to regulation governed by the RTE Act.¹⁸ The RTE norms are concerned with minimum standards that include infrastructure requirements, teacher qualifications and teaching hours, curriculum and assessment parameters, ban on physical punishment, holding back on expulsion before completion of elementary education, as well as stipulations specifically for private schools such as reservation of 25 percent seats in at the elementary level in private schools under provision 12 (1) (C) of the Act.

The RTE Rules developed by the national government and circulated to the states as a guideline for them to formulate state rules, do not specify the local government authority responsible, for granting recognition, leaving this decision to the states. As a result, different bodies have been designated for the task in each state. The process for gaining recognition requires the private school provider to make an application to the said local government authority, which grants recognition if the school fulfils the norms and standards provided in the Schedule of the RTE Act.

¹⁸ Section 18 of the RTE Act, 2009 mandates private school providers to obtain a certificate of recognition from the relevant government at the local level.

The application process requires private school providers to fill out a combined self-declaration and application form known as “Form I” and submit it to the designated local government authority. There are slight differences across states in the content of this form, though the intent is the same. The self-declaration regards the school’s compliance with the norms and standards specified, and a set of further conditions, related to proactive disclosures of finances, non-profit motive, openness to inspections, etc. Once the application is processed by the local authority, an inspection or site-visit is conducted, and if all the conditions are met, then recognition is granted in writing via “Form II”. A broad comparison of the processes in the six focus states in this study, is given **Table 9** below.

In addition to the norms regarding input standards, Section 12 (1) C of the RTE Act mandates that the private schools reserve at least 25 percent of their seats in the in-coming grade at elementary level for children belonging to socially disadvantaged and economically weaker sections. Private schools are reimbursed to the extent of per-child-expenditure incurred by the government in the State schools or the actual amount charged from the child, whichever is less (See **Box 1**).

Moreover, to be recognized as a bona fide graduate of school education, a certificate from one of a national or state examination boards is required. Every recognised school has to be affiliated to a board or a council, and accordingly the curriculum for their syllabus is determined, and examinations related to school completion are conducted. As previously mentioned, while there is a national level government board called CBSE, most of the states have their own education boards. More recently, international boards such as the International Baccalaureate (IB), have also been allowed to function in India. Therefore, in addition to getting recognition from government authorities, private schools also need to get recognition from one of the boards of examination. This adds another layer in the regulatory process for schools.

Table 9 : State-wise Comparison of Recognition Process for Private Schools¹⁹

State	Authority processing applications	Application in the public domain	Inspection Conducted	Recognition Granted	Time provided for correction, in case of deficiency	Appeal Process	Recognition & Inspection Fees	Registration details of non-state agency
Himachal Pradesh	BEO for primary schools ; DEO for upper primary onwards	Within 15 days of receipt of Form I	Within 3 months of receipt of Form I	Within 15 days of inspection	Not mentioned	Not mentioned	Yes. Amount unspecified	Not applicable
Punjab	District Education Officer (DEO)	Within 15 days of receipt of Form I	Within 3 months of receipt of Form I	Within 15 days of inspection	Schools given 1 year to correct 40% of deficiencies, and 3 years to correct 100% deficiencies	Yes	Not mentioned	Must be registered under Societies Registration Act, 1860 or a legal public trust
Rajasthan	Local authority. Post not specified	Not mentioned	Not mentioned	Within 6 months of receipt of application	Not mentioned	Yes	Not mentioned	Must obtain recognition under the Rajasthan Non-Government Educational Institutions Act, 1989
Uttar Pradesh	Zila Shiksha Adhikari (ZSA)	Within 15 days of receipt of Form I	Within 3 months of receipt of Form I	Within 60 days of inspection	Given 2 years for corrections	Not mentioned	Not mentioned	Must be registered Societies Registration Act, 1860 or a legal public trust.
Tamil Nadu	Local authority. Post not specified	Within 15 days of receipt of Form I	Within 3 months of receipt of Form I	Within 30 days of inspection	Schools given 3 months to correct deficiencies /meet all criteria	Not mentioned	Not mentioned	Must be run by a society registered under the Tamil Nadu Societies Registration Act, 1975, or a legal public trust.
Telangana	Till Upper Primary Schools: District Educational Officer. For Secondary Schools: Regional Joint Director.	Not mentioned	Not mentioned	Applications should be submitted by 31st October and decision on granting recognition taken by 31st January.	Not mentioned	Not mentioned	For Pre-Primary to Upper Primary ₹ 25,000. For Secondary Schools, ₹ 50,000.	Not mentioned

¹⁹ This table only captures the norms as mentioned in State RTE rules and State Education Acts governing recognition of private schools. While certain aspects such as inspection may not be mentioned in a particular Act or rule, it does not mean that inspections do not take place. It is unclear based on secondary research which of the gaps in the table mark aspects that are not applicable in a state vs. what may be happening on the ground but is not explicitly mentioned in publicly available documents.

Box 1: Section 12 (1) (c) of RTE Act, 2009: Reservation of seats in private schools for children from economically disadvantaged groups

Section 12 (1) (c) of the RTE Act, 2009 mandates that a minimum of 25 percent of the seats in the in-coming class at elementary level should be reserved for children belonging to socially disadvantaged and Economically Weaker Sections (EWS) in all private-unaided schools; excluding minority institutions. The definition of socially disadvantaged section or EWS, has been left to state governments to decide and specify in the rules for implementation of the RTE Act made by state governments. Studies have shown considerable gaps in implementation of this provision across different states in the country (Sarin, et al., 2018).

Private schools are reimbursed to the extent of per-child-expenditure (PCE) incurred by the state government in the State schools or the actual amount charged from the child, whichever is less. According to the Government of India (GoI) notification in April 2010, the per-student reimbursement is to be determined on the basis of the total annual recurring expenditure by the “appropriate government” (Sarin, Dongre, & Wad, 2017). These are the broad guidelines but it is left to the discretion of the respective state government to decide on the process and extent of reimbursements. Additionally, schools which have received any land, building, equipment or other facilities either free of cost or at a concessional rate, are not entitled to this reimbursement. In order to make the admissions under RTE Section 12 (1)(c) transparent and the process more efficient, several state governments are adopting the use of e-governance techniques such as admission portals (Sarin, Dongre, & Wad, State of the Nation: RTE Section 12 (1) (C), 2017).

There are four basic stages in RTE 12 (1)(c) admission process: 1) identifying vacancies in schools by the government, 2) confirming applicants, 3) lottery for matching applicants to vacancies, and 4) confirming admissions. In the first two stages, officials obtain details about the school’s location, entry-level vacancies, and eligibility of the applicants, and the location of the eligible applicants. To identify vacancies for admission, the administration relies on profiles of unaided and non-minority private schools with information about location, intake capacity, entry criteria, entry-level vacancies, and bank account details for reimbursement against admissions (Sarin, Dongre, & Wad, State of the Nation: RTE Section 12 (1) (C), 2017). In the last two stages, the matching of applicants to vacancies is done through a lottery process. After the lottery process, the administration has to facilitate the admission of the deserving applicant.

Withdrawal of Recognition

Once a school is established, it is subject to monitoring and must continue to maintain the criteria, operational guidelines, and financial propriety specified at the time of granting recognition. If for any reason, a school fails to maintain the criteria or violates the set norms and standards, the relevant government authority can notify the school in writing initiating withdrawal procedures, as stated in Section 18 of the RTE Act. As per the RTE Act, private schools established without a certificate of recognition or those that continue to function once recognition is withdrawn, are liable to be fined. The Act allows schools or individuals who receive capitation fees, to be fined up to ten times the fees charged. Again, those who subject a child to a screening procedure, may be fined up to ₹ 25,000 for the first instance, and ₹ 50,000 for each subsequent instance.

However, recognition cannot effectively be withdrawn without affording the school an opportunity to be heard. The national RTE Act rules do not specify the time period for schools to correct any improprieties. Most state RTE rules also list the steps for the process of de-recognition of schools. Once derecognised, the school must cease to function from the date of the withdrawal order. Typically, the withdrawal order comes into effect from the following academic year. The RTE Act also requires that such withdrawal orders give directions on which neighbourhood schools the students of the now derecognised schools must be admitted to.

5.1.2. Financial and Other Norms

The rules under the RTE Act, do not address all financial regulation measures in detail. There are, however, some dispersed financial norms, with different board affiliations at the state level. In the absence of a national framework, the regulations are not always consistent across all states. While some states, for example, have regulations regarding teacher salaries, others might not. Again, even if a particular rule exists across the states, the financial norms therein might be different. We discuss three important aspects: Audit of accounts, school fees, and teacher salaries, with respect to private schools.

a. Audits of Accounts

In recent years, there have been very few audits conducted by CAG at the national level. The latest performance audit of the MDM scheme was in 2015 and a compliance audit of RTE was conducted in 2017²⁰. In addition to national audits by CAG, states maintain their own auditing processes for private-unaided schools based on state-specific legislations for private educational institutions. For instance, the Punjab State

²⁰ A performance audit assesses the extent to which an organisation, programme or scheme operates economically, efficiently or effectively whereas a compliance audit assesses if the provisions of the applicable law, rules or regulations are being complied with.

Regulation of Fees of Unaided Educational Institutions Rules, 2017, mandates every private school to maintain proper accounts of fees and charges, and prepare annual statements of accounts, which need to be audited by a qualified Chartered Accountant and forwarded to the regulatory board. Similarly, in Tamil Nadu, financial audits of private schools are covered under both the Tamil Nadu Schools (Regulation of Collection of Fees) Rules, 2009 and Tamil Nadu Private Schools (Regulation) Act, 2018. These annual audit reports are to be presented by the school, at the time of making an application for the renewal of recognition. In Rajasthan and Himachal Pradesh, the audit reports are checked by government authorities and need to be submitted to the government at the time of renewal of recognition of the schools. Schools in Telangana, are required to submit an annual administration report to the “competent authority” each year, which has to be supported by statements of audited accounts.

b. Teacher Salaries

Teacher salaries have emerged as a fairly contentious issue in the discourse on school education, particularly in the context of the new paradigms of accountability, which calls for pay to be linked to performance, or learning outcomes in this case. But, teachers in the public system are government employees and as such required to perform a range of administrative functions, including collecting data, answering RTI requests, but also acting as census enumerators and election officers - duties that private school teachers do not have to perform. The remuneration of public-school teachers is, thus, meant to reflect this expanded role. However, budgetary constraints have over the years meant that the teaching profession has become more and more contractualised, with lower pay for contractual teachers. The RTE Act called for an end to contractual teachers and the regularizing of the teaching cadre. This meant that only permanent, regular and fully qualified and trained teachers could be hired, but also that they would be paid in accordance with the Pay Commission’s recommendations. However, low budgetary allocations to education have meant that state governments are unable to employ teachers at the level of salaries mandated, leading to heavy contractualization instead.

While the Act is clear on the qualifications for the teaching cadre for State schools, it is less clear on such recommendations for non-state schools. As a result, teacher salaries in private-unaided schools do not appear to follow any given set of norms, although most states have some broad norms for salaries of teachers. For instance, in Himachal Pradesh, the salary paid to teachers and non-teaching staff is made commensurate with the fees, and income collected through donations and other sources. Rajasthan mandates that *private-aided* schools pay a salary that is similar to the compensation of teachers in government schools and the payment

be processed by the 15th of each month. However, there are no specific norms stated for *private-unaided* schools²¹.

c. School Fees

School fees are a highly controversial issue as far as private schools are concerned. All six states in our sample have some rules regarding fees. Even as these rules are all geared towards keeping a cap on fee raises, they vary slightly in their approach. Generally speaking, these regulations require that the fees and funds collected should not be of an exploitative nature. The fees should be commensurate with the salary of the staff being paid, location, development of infrastructure, and facilities being provided to the students. For instance, Telangana provided a maximum fee structure based on school size, separately for rural and urban areas. If a school wants to charge a fee higher than this, they need to get approval from the District Fee Regulatory Committee by submitting a justification report along with audited statements of previous years. Telangana also requires the private schools to put the fee structure in the public domain. In contrast, Himachal Pradesh does not explicitly mention a cap in terms of absolute amounts of the fees in the Himachal Pradesh Private Educational Institutions (Regulation) Act or its rules. Similarly, Rajasthan Schools (Regulation of Fee) Act, 2016, does not specify any range in terms of the fees that a private-unaided school can charge. In order to ensure increased financial accountability many states have mandated the formation of fee regulatory committees. Private institutions setting fees must get approved by these committees. There are, however, state-wide variations in the structure and stakeholders involved in these committees.

5.1.3. Monitoring Compliance

The government system of monitoring schools is fairly elaborate on paper. The education governance in India is a complex, multi-layered process and monitoring is recognised as one key element through which functioning of schools is tracked and necessary steps are taken for course correction. The frontline government officials are supposed to make monitoring visits to government schools and look at a range of issues including infrastructure, teaching practises, accounts, and MDM. The number of visits to be made is also specified in certain states. However, it has been observed that while it designates various authorities down to the block level for regular monitoring of schools, it is not always undertaken as desired because of factors such as low state capacity, lack of resources and systemic infirmities (Bhatty & Saraf, 2016). While the same government structure is responsible for regulation of private schools, it is mostly restricted to the

²¹ Rajasthan Non-Government Educational Institutions (Recognition, Grant-In-Aid and Service Conditions Etc.) Rules, 1993. Available online at: https://education.rajasthan.gov.in/content/dam/doitassets/education/school&secondaryeducation/elementary-education/pdf/rules/RNGEI_Act_1993_28102015.pdf

administrative processes such as checking eligibility as per the norms for granting and renewal recognition, and related procedures. Concurrent monitoring to check compliance of the regulatory norms rarely happens. The present system of governance and regulation leads to centralisation of power and potentially conflict of interest, as the body formulating and implementing policies is also in-charge of regulating it.

National and State-Level Commissions for the Protection of Child Rights

The RTE Act, for the first time in the legislative history of India, separated the implementation from the monitoring function. As such, it mandated the National Commission for the Protection of Child Rights (NCPCR) and the corresponding State Commissions (SCPCRs) as the monitoring bodies for the RTE Act.²² More specifically, the Act expanded the functions of the NCPCR and SCPCRs to also include the following:

- Examining and reviewing safeguards for rights under the Act and recommend measures for effective implementation;
- Inquire into complaints regarding RTE compliance and take necessary action.

Monitoring of private schools is included in the ambit of NCPCR and SCPCRs. However, the government's own monitoring mechanism, i.e. through the Ministry of Education (MoE) and the state government education departments, is not precluded by this addition in the RTE Act. The overall role of NCPCR and SCPCRs with respect to school education and functioning, based on publicly available information is presented in **Box 2**.

Monitoring of CBSE Affiliated Schools

The CBSE Affiliation By-Laws, 2018, details processes and types of inspections for monitoring the school's compliance with the by-laws. The CBSE may conduct periodic inspections of affiliated schools, at any time during the affiliation period. The frequency of such inspections is decided by the Board from time-to-time. These periodic inspections are to be carried out by a CBSE appointed Inspection Committee and can focus on any or all of the factors inspected during the original inspection conducted prior to granting the school affiliation. These include infrastructure, teachers and their qualifications, teaching processes, academic standards, recordkeeping, book of accounts, safety and security provisions, existence of inclusive policies for persons with disabilities, among other things. The by-laws emphasise that such periodic inspections should rely on "*outcome-based methodology to make the inspection process more academic oriented.*"

²² It allows states without an SCPCR to constitute an authority, i.e., a Right to Education Protection Authority (REPA) to fulfil the functions of the SCPCR.

Box 2: Role of NCPCR and SCPCRs in Monitoring School Education

Section 31 of the RTE Act stipulates the National Commission for Protection of Child Rights (NCPCR) as the main body monitoring the provisions of the RTE Act. The NCPCR was set up in 2007 after the Protection of Child Rights Act was passed in 2005. According to the Act, the functions of NCPCR include: a) reviewing the safeguards for rights of children provided under RTE and giving recommendations to secure them; b) inquire and resolve into grievances; and c) taking necessary steps in case of any violations, as outlined in the Protection of Child Rights Act, 2005. Since any single body cannot be expected to monitor RTE compliance across the country, the state-level bodies, State Commissions for Protection of Child Rights (SCPCR), are entrusted to monitor it in their respective states. In states that did not have an SCPCR, the states were directed to set up a Right to Education Protection Authority (REPA) as an interim authority to monitor the provisions of the RTE Act.

The NCPCR constituted an expert committee with educationists, government officials, civil society activists, etc. to help inform NCPCR's plan for monitoring of the RTE. Some of the recommendations of the expert group include maintaining a web-based portal for registering grievances, conducting social audits, and establishing an RTE Division with the NCPCR.

Information regarding the working of the expert group, such as the frequency of the meetings and minutes of most meetings, are not available in the public domain. Moreover, the functioning of the RTE Division is equally opaque. There is little information about their role and the work they have been doing, in the public domain. The RTE Division is entrusted to organise frequent capacity-building workshops with different officials and the civil society, but such activities are also few (The Bastion, 2017). Dhir Jhingran, who acted as the national coordinator of RTE for NCPCR, in an interview in 2013, after quitting his role, said the NCPCR was not committed to monitoring RTE ([Kaur, 2013](#)). Among other issues, he identified the lack of funding for NCPCR as well as SCPCRs as an important obstacle in their ability to monitor RTE.

We also looked at the working of SCPCRs in our six states. Himachal Pradesh and Rajasthan were the only states that did not have a dedicated portal for SCPCR. Rajasthan seems to have an analogous body called Directorate of Child Rights. Uttar Pradesh and Telangana were the only two states which provided an option to register their complaints with SCPCR. However, much like with NCPCR, there was little information about the actual working of the SCPCRs towards monitoring RTE in their states.

5.2. Compliance of Regulations

There is no denial that regulation of private schools is crucial to maintain the ‘public service’ nature of school education. This is recognised also in NEP, 2020, which states that the current regulatory infrastructure has not managed to "*curb the rampant commercialization and economic exploitation... by for-profit private schools*" (New Education Policy 2020, 2020). All the government officials and administrators interviewed as part of this study across the five sample states (except Tamil Nadu), have unequivocally agreed with the importance of, and need for, regulations. Almost all of them believed that in order to safeguard the right of every child to a good quality education without being subjected to any kind of exploitation, government oversight is extremely important. Without the rules, "*there will be arbitrariness in decisions taken by private schools*", as stated by a state level official from one of the study states. This he stated might be hampering the very nature of education which is envisaged to be inclusive and equitable. Interestingly, many of the private school teachers and owners also agreed that regulations are necessary to ensure that a certain level of basic standards are maintained by all schools irrespective of the type of management.

However, to monitor if private schools comply with regulations, it is important for the frontline officials to have a clear understanding of what ‘regulation’ and ‘monitoring of compliance’ means. During the interviews, we tried to understand this aspect. Of the 16 block officials interviewed, while four felt that their schools were regulated *and* monitored, the remaining believed that the two (monitoring and regulating) were the same thing. In contrast, at the district level, all seven officials had agreed that the schools were both regulated and monitored. There seems to be a significant block-level difference in Punjab when it comes to regulations and monitoring of schools. However, this can be explained by the subtle differences in understanding of the terms regulation and monitoring. For example, the BEO from Gandiwan block said "*Regulation means governed by rules and monitoring means supervision of different aspects by authorities to improve quality*". Another BEO from the Chogawan block had a different view as he noted, "*Regulation means observation of school at the time of recognition and monitoring means regular observation of all aspects of a school*".

We also asked our respondents whether there are guidelines regarding regulations and monitoring for different aspects of school education. While fewer officials (13 out of 23) were aware of guidelines regarding fee structure, most (22 out of 23) were aware about the guidelines related to teacher qualification, curriculum and pedagogy, and textbooks. The most regulated aspects of school education, according to government officials, are MDM and learning outcomes. While a robust regulatory framework regarding learning outcomes is absent, in the past few years it has become an important focus area for the State.

While the regulations are important for ensuring the right to quality education for every child in India, there are certain aspects with respect to their implementation, which need to be strengthened. At the same time, there seems to be some scope for bringing in certain modifications in the current processes and norms. Based on the detailed interviews and discussions with government officials, teachers and non-state providers, the following issues regarding compliance of the current system of regulation emerged.

Unsatisfactory compliance of RTE norms

The 10th Stocktaking Report of the Right to Education Forum (RTE Forum) that investigated the implementation of the provisions under the RTE Act during the last decade, noticed that overall compliance of the RTE norms by private schools has not been satisfactory (RTE Forum, 2020). While the Act and several state-level legislations have laid down clear norms regarding teacher qualifications, admission procedures, infrastructure facilities etc., many private schools have continued to fail in meeting these standards. For instance, Section 23 of the RTE Act provides for an end to capitation fees and prohibits screening at the time of admission. However, many private schools continue to have extensive entry-level assessment processes, including interviewing parents to ensure that children from only certain socio-economic categories are selected. A considerable number of private schools run even without a certificate of recognition (RTE Forum, 2019).

The response of private school teachers regarding compliance with RTE norms was somewhat different. Of the 32 respondents, 29 said that their schools followed RTE norms regarding infrastructure, 26 reported compliances with curriculum norms and more than 20 reported compliances with norms regarding Pupil-Teacher Ratio (PTR), teacher salaries, and reservation under Section 12(1)(c). The main exception was Rajasthan where some teachers reported that schools did not comply with teacher salary norms. The RTE forum has also observed that the progress in implementation of Section 12 (1) (C) of the RTE Act by private schools has been slower. Till 2018-19, only 15 states and UTs had notified per-child cost for reimbursement to private unaided schools against admission of children belonging to disadvantaged groups and weaker sections (RTE Forum, 2019). Even in 2021, the situation remains similar.

Interviews conducted as part of this study with the private school teachers and head-teachers across the six states, revealed that even though the majority of the schools adhered to 12(1)(c) norms in principle, they do face certain challenges. Some teachers felt that the reimbursement process is cumbersome and the per-child amount received from the government is quite low. To quote a private school head-teacher from Himachal Pradesh, *“We rarely apply for reimbursement under RTE (12)(1)(C) as the per-child amount received from the*

state is very low.” Further, some head-teachers and private school owners said that the state government takes a long time to reimburse the schools under this provision.

Both the head teachers and one of the teachers interviewed from Himachal Pradesh reported that their schools did not reserve 25 percent of the seats for economically disadvantaged groups as required by Section 12 of the RTE. This, teachers in Himachal Pradesh stated, was due to cumbersome admission procedures. Worryingly, a CAG audit report for the state of Rajasthan had found that in the year 2015-16, over 16 percent of non-government schools flouted Section 12(1)(C) by either not registering in the RTE portal or not admitting students once the application was received (CAG, 2017). Moreover, the CAG report showed that several non-government schools did not receive all the instalments of their reimbursements. The CAG Report also estimates that 6 to 30 percent of students enrolled under 12(1)(C) dropped out before moving to the next grade.

Interestingly, **there is some dissonance with government circles regarding the reimbursement clause in the RTE Act. Some officials are of the opinion that it implies a huge cost to the exchequer and the funds would be better served by being directed to State schools instead.** This could be one of the reasons for the tardiness noticed in making reimbursements.

Monitoring of Compliance Happens Mostly at the Time of Granting Recognition or Renewal

It was evident from the discussions with government officials that the current government monitoring system for private schools needs a lot more strengthening. Interactions with BEOs and DEOs revealed that monitoring of private-unaided schools happens largely at the time of granting recognition (for upgradation of a school or to open a new school) or at the time of renewal of recognition. In most of the states, renewal of recognition happens once in three to five years. Most BEOs reported that there is no fixed time interval for visiting private schools and they generally visit them for monitoring purposes once a year or at longer intervals. For instance, some BEOs as well as the state level officials reported that they need to visit private schools for purposes such as collection of U-DISE data, or in case of any major complaints from parents or community. The block officials also check and verify documents of students from Economically Weaker Sections (EWS) in case they apply for admission in private schools under the provision of 25% reservation mandated by RTE Act. But this was limited and not as frequent. While a lot of these checks including for granting or renewal of recognition happen through physical visits, sometimes the documents are checked at the BEO’s office without them physically visiting the private schools.

Apart from recognition-related monitoring visits, general inspection at other times of the year rarely happens. There are broadly two reasons for this. First the BEOs or DEOs are not mandatorily required to make regular monitoring visits to private schools. Second, since the same officials are in-charge of monitoring and administration of government schools, they get little time for monitoring of private schools. The situation is exacerbated by large vacancies in posts for frontline government officials. Thus, multiple responsibilities are entrusted to the existing officials and this adds to their burden. Our discussion with the Joint Director, Telangana state education department, revealed that block and district officials in Telangana are instructed to conduct annual inspections of private schools as well. Accordingly, monthly inspection plans are prepared for the year in advance. However, due to lack of manpower at the block at district level, fewer schools are inspected every year.

To quote a Block level Elementary Education Officer from Himachal Pradesh, *“There is relatively less monitoring of private schools, as a result of which there are opportunities for them to disobey certain operational norms.”* In fact, a private school Principal also felt that the spirit of public service can be better instilled in private schools if there is regular inspection by the government officials. To quote a senior teacher from a private school in Rajasthan, *“The current rules require increased government oversight. Some private providers are running schools based on recognition of other schools, even if they do not have the required resources. This can be difficult to detect without strict monitoring.”*

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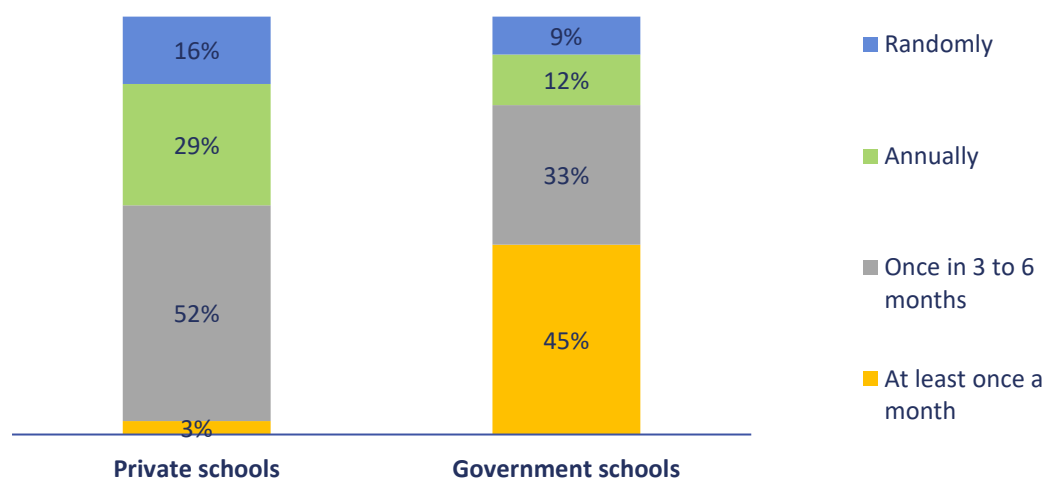
---- A senior school teacher

The findings were corroborated in the teacher interviews. Most teachers shared the view that unlike government schools where monitoring is more frequent, monitoring of private-unaided schools was annual at best, and largely at random. All the 33 government teachers reported that government officials either from the block, district or state offices visit their schools to monitor teaching-learning processes. Forty-seven percent of government schools were reportedly visited at least once a month by government officials. Another 32 percent government teachers reported that monitoring visits occur once in 3 to 6 months. Only one of the private school teachers from Tamil Nadu reported that their school was monitored as often. On the other

hand, 29 percent of private schools were visited annually and 16 percent reported random visits by government officials. In the case of government schools, those visited annually and randomly were much lower at 12 percent and 9 percent, respectively (**Figure 9**).

Within private schools, however, there were differences across states in the frequency of monitoring. While a majority of respondents in Himachal Pradesh reported being visited by a government authority annually, a majority in Rajasthan reported visits once in three to six months. This difference could be due to the creation of the PEEO position in Rajasthan, which allows for more local monitoring.

Figure 9 : Distribution of teachers across their views on frequency of monitoring of schools by government officials (%)



Source: Interviews with 33 government school teachers and 32 private school teachers across 6 Indian states, March 2021

Punitive action rare for non-compliance

As part of this study, block and district level government education department officials were asked to list some of the regulatory norms, the violations of which could lead to revoking the licence of a private school. Almost all the respondents said that violation of RTE rules, financial impropriety, and unmet teacher qualifications, can lead to revoking of licence. On the other hand, most officials had reported that non-compliance with curriculum or pedagogical norms and learning levels do not lead to revocation of licence. Almost all the officials said that in case of violation, schools are given time to correct it. In case schools are found to be not following these norms, then an initial warning is given. After a second warning, the licence can be withdrawn.

The process of de-recognition shows some regional variations. BEOs and DEOs from Himachal Pradesh reported that regular field visits are conducted for granting and renewal of recognition. Special focus is given to infrastructure norms, Section 12 of RTE, teacher-pupil ratio, and safety regulations. If any violations are found, then the school is notified and a period of 1 to 6 months is given to correct them. Respondents from Punjab said that violations of RTE norms can lead to de-recognition. BEOs and DEOs from Rajasthan pointed that de-recognition is not their responsibility but decided at the district level. They are involved in monitoring compliance and communicating it to the district officials. In Uttar Pradesh, the BEOs reported that violation of financial regulations and teacher salary norms can lead to revoking of licence. The DEO, on the other hand, included factors such as teacher qualification criteria, fee hikes, non-compliance with RTE norms, learning outcomes, and non-compliance with curriculum or pedagogical norms.

Thus, it is clear that the officials have a fairly good understanding of the steps that are needed to be undertaken in the case of non-compliance of norms by private schools. However, punitive measures for failing to adhere to these norms have been very few. A study conducted in the year 2016, found that only 5 out of 34,756 schools across eight states had been closed due to non-compliance of RTE norms (APU, 2016). The RTE Forum that looked at the implementation status during the last decade, has also taken note of the lack of concrete action for non-compliance. **The reasons for failure to take appropriate action are often associated with political influence of private providers** – the phenomenon of “relocated patronage” mentioned in the introductory chapter. This was corroborated by government officials interviewed in this study. One such official from Telangana, suggested a system of digitising the process to avoid such interference. In a digitised system, he opined, it would be difficult for a school to implement any decision without formal approval from all concerned bodies and proper compliance of the rules. Moreover, the absence of a structured grievance redress mechanism for parents and users of facilities, also makes it difficult for violation of norms to be documented and accounted for by a regulatory system, through appropriate action.

In addition to these general shortcomings, there are two other criticisms of the regulatory process often cited.

Regulating ‘input standards’ is critical to ensure quality

It is evident from **Section 5.1** that the current norms related to recognition of private schools, are mostly related to ‘input’ standards. This has been pointed out as a criticism of the regulatory mechanism by private providers (CSF , FICCI, 2014) . Some studies have even noted that the RTE Act lays emphasis on “the right to schooling and physical infrastructure” rather than providing quality education (IDFC Foundation, 2012). One set of views suggest that this input-focused approach is restrictive and takes away from the more important

goal of quality outcomes. Moreover, enforcement of rules for government and private schools sometimes vary. For instance, a study released in 2017 noticed that while the specific requirements related to infrastructure, finances, governance and teacher qualifications under the RTE Act were not always fulfilled by government schools, they were being enforced on private schools, making it financially unviable for schools such as those in the LFPS category (Central Square Foundation, 2020).

However, discussions with government officials in this regard across three of the sample states (Telangana, Himachal Pradesh and Rajasthan), gave a different perspective. All of them believed that the current emphasis on input standards is extremely important for the eventual achievement of learning outcomes. To quote a government official from Rajasthan, *“I agree that the current rules seem to focus on input parameters! However, these inputs indirectly help in improving the quality of learning.”* Similarly, a government official from the Education Directorate, Himachal Pradesh, felt that *“Due to competitiveness among private schools they tend to put more effort on achievement of results and outputs. It is the input standards that often get neglected, which is why it is important to ensure them through the current regulations.”* In fact, some of the private school owners and principals were also of the opinion that the current norms regarding adequacy of teachers, classrooms, other infrastructure facilities, and safety standards are extremely important. As reported by a private school owner from Himachal Pradesh, *“Regulations regarding availability of all essential facilities and safety standards in schools are essential. As far as learning outcomes are concerned, it is the responsibility of the school management and teachers to make sure that they are achieved.”*

Current Regulations Do Not Suppress Innovation and Creativity of Private Schools

Another commonly noted criticism of the current regulatory regime is the impact of norms on creativity and innovation. “Our hands are tied; we are unable to experiment and innovate” is an oft-heard refrain from private providers. The government officials interviewed in this study, however, believe otherwise. As reported by a DEO in Rajasthan, *“Creativity and innovation has nothing to do with the existing rules! It all depends on the management of private schools. There are examples in Rajasthan of schools running in PPP mode that are being quite creative in their ways of teaching”*. In fact, many private school principals and owners were also of the opinion that innovation and creativity depend upon the private school management and have no direct linkages with the current system of regulation.

Nonetheless, the regulatory system leaves a lot to be desired. Four issues in particular stood out from our primary survey of private providers.

Need to collate compliance norms around a common framework

Education in India is a concurrent subject, which means that rules can be defined by both the Union government and the states. This has led to a situation where there exist two centres of governance with multiple supervisors who do not always have clear communication among themselves (Singh A. , 2015). In 2017, a study of private school regulations carried out in 4 states revealed that private schools operate under “a mix of RTE Rules, State Acts, executive orders, notifications and circulars”, which at times are in conflict with each other (Ambast, Gaur, & Sangai, 2017).

Take the case of granting recognition to private schools including the affiliation process with the relevant education board. As elaborated in the **Section 5**, the criteria and norms are fairly elaborate requiring several documents including approval certificates, to be submitted by the private providers to the government. A study of private schools in Delhi, Haryana and Uttar Pradesh released in 2019, tried to track this process to find that opening a private-unaided school not only require multiple documents, but many of which overlap with each other leading to confusion, and making the registration process complicated and cumbersome (Centre for Civil Society, 2019). Some of the private school owners and teachers interviewed as part of this study were also of the opinion that compliance of regulations and related documentation and approval processes takes up a considerable amount of their time in the beginning of the academic sessions.

We tried to get the perspective of the government on this matter. The state government officials interviewed were of the view that such norms are essential to ensure quality education. To quote a DEO from Himachal Pradesh, *“The rules for granting recognition are not new, and they have been in place for a long time. At the time of recognition and renewal, around 25 different aspects are checked. By fulfilling all the criteria, the school gets strengthened.”* Even though the current norms and rules might appear to be slightly cumbersome to follow, they did not believe that this was actually the case. Some government officials believed that private school providers often lacked a proper understanding of the regulatory norms and therefore, they keep getting entangled in the processes and find the regulations complex and difficult to comply with. Moreover, while several states in the recent years have introduced an online system of application for recognition and renewal of private schools, as well as implementation of the provision of 12(1)(C) under the RTE Act, not all private providers have a clear understanding of the online application processes and face difficulties in uploading the relevant documents. It was even suggested by the president of a Private Teachers’ Union in Himachal Pradesh that *“When the government grants permission to open an educational institution, it is necessary to train the private providers regarding the regulations that they need to comply with.”*

A few private school owners and head-teachers, however, believed while such regulations are necessary, the problem lay in the absence of clear guidelines to follow. A private school owner from Himachal Pradesh, for instance, stated that *“To a large extent, it is true that the process related to school recognition is quite complicated. However, the focus of the government is on ensuring certain standards in schools, and therefore it should also be strict. We see various malpractices around us such as schools functioning inside a single room, or not having proper recognition etc.”*

“To a large extent, it is true that the process related to school recognition is quite complicated. However, the focus of the government is on ensuring certain standards in schools, and therefore it should also be strict. We see various malpractices around us such as schools functioning inside a single room, or not having proper recognition etc.”

---- A private school owner

In this context, implementation might be easier if every state puts together all the regulatory compliance requirements for private schools in one place in a simplistic manner, so that there is greater clarity and compliance becomes easier. Such a collated set of guidelines in one place, along with training and awareness generation activities for private school provides could be extremely beneficial for better compliance.

Lack of Clarity in Financial Norms

Many states do not have clear financial regulatory norms such as threshold limits for school fee increases. This opens avenues for private schools to charge arbitrary amounts at different time periods. For parents, the random raises in school fees, have in many states seen parents rush to the judiciary system to register their grievances. In 2004, the Supreme Court of India, in a judgement upheld the right of state governments to regulate fees charged by private-unaided schools. The judgement maintained that schools should not commercialise education and should be treated as a public good.

The RTE Forum too noted numerous instances across states during the last decade when private schools have arbitrarily hiked their fees. This was especially true during one and a half years of school closure in the country from March 2020 due to COVID-19 pandemic. As reported by a DEO from Himachal Pradesh *“Because of the way private schools have practised arbitrariness regarding fees during the COVID period, the trust of many parents has been broken.”* Similar views were shared by government officials from Telangana and Rajasthan as well. Even though many states have fee regulatory committees and any increase in school fees cannot

ideally come into effect without a formal go-ahead from the district education office, still there have been many reports of the excessive fee hikes.

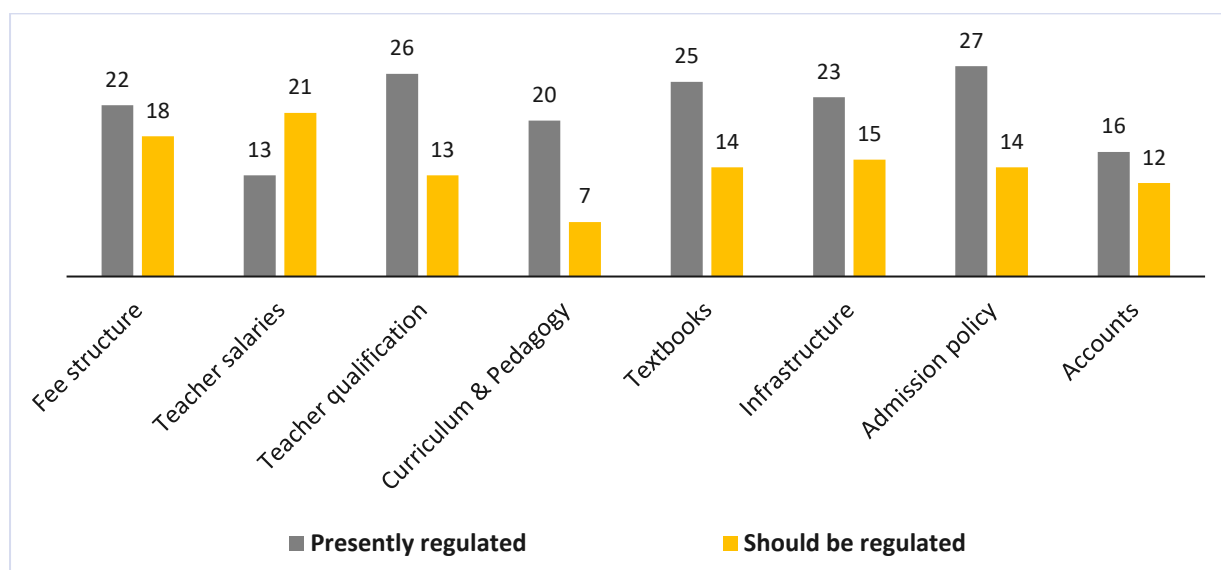
On the other hand, the private school owners interviewed were of the view that they are completely dependent on the fees charged from children for their functioning as there is no provision for any kind of financial security from the government. Thus, they believed that there should be some flexibility in raising fees. Moreover, it is often argued by private schools that if their teachers are expected to be paid at levels similar to those in government schools, then the fees charged by them needs to reflect that.

It is important that the government prepares a clear set of norms and guidelines around fee structures, which is currently missing. This would also enable private schools to know the threshold that can be charged and plan accordingly.

Need for greater regulation of teacher salaries

Teachers and head-teachers from private schools interviewed as part of the study, were also asked to share their perception on the areas which required greater regulation versus aspects of the school that were already regulated. As can be seen in the graph below, on average, the teachers felt that the most regulated areas were teacher qualifications, admission policy and textbooks, while the least were teacher salaries, accounts and curriculum and pedagogy. For teacher salaries, on average, teachers felt that there was a need for more regulation. On the other hand, there seems to be some consensus that fee structure is and should be regulated. The aspects that private school teachers felt needed more regulation are curriculum and pedagogy, accounts, and teacher qualifications (**Figure 10**).

Figure 10 : Perception of private school teachers on aspects that are currently regulated and those that should be regulated (Number of private school teachers)



Source: Interviews with 32 private school teachers and head-teachers across six Indian states, March 2021.

Lack of State Capacity

Overall, it appears that state capacity is a serious challenge with respect to governance with obvious ramifications for regulation of non-state provisioning. Interviews conducted with BEOs, DEOs and a few state education department officials as part of this study, also revealed that resources available for monitoring of non-state schools are limited. It was interesting to note that while physical and financial resources were cited as areas of relatively higher concern, human resources show wide variations across the states, as seen in vacancy rates of frontline officials. Thus, of the 301 sanctioned posts for Chief Block Education Officers (CBEOs) in Rajasthan, 65 were vacant at the time of this study, but at the district level, of the 33 posts for District Education Officers at elementary level (DEO-Elementary) 3 were vacant and of the 33 posts for District Education Officers at secondary level (DEO-Secondary), only 2 were vacant. Similarly, in Himachal Pradesh, of the 161 sanctioned posts for Block Elementary Education Officers (BEOs), only 19 were vacant as on February, 2021²³. Similarly, a state level official from Telangana school education department pointed towards much higher vacancies at the block and district levels in that state. According to the statistics shared with us, of the 484 sanctioned posts for Mandal Education Officers (MEOs) in Telangana, who are in charge of monitoring of primary schools in their blocks (similar to BEOs in the other states), only 17 posts were filled in July 2021. Moreover, during the interviews conducted as part of this study, only 7 respondents at the block and panchayat level reported that they were trained for monitoring and regulation functions. All of them

²³ Data shared with us by the state education department.

mentioned that their training was through written guidelines or instructions explaining how to conduct monitoring. On the other hand, all the DEOs said that they were trained for this function.

State capacity concerns are highlighted at the national level too, in relation to the NCPCR. For instance, the budget allocated to the Child Rights Commissions for monitoring has been as low as less than a dollar per school per year!²⁴ Similarly, frontline officials responsible for monitoring are highly understaffed and under-resourced (Bhatty & Saraf, 2016). In addition, the systems in place do not make for monitoring to proceed in ways that could be beneficial to the cause of education. Instead, they appear to be designed towards fulfilling administrative tasks at best. Most importantly, lack of feedback and follow-up procedures provide the weakest link in the chain. This lack of capacity that has been noted for State schools, applies equally if not more, to monitoring non-state schools. In other words, while granting and withdrawing recognition are functions that are more fully developed and followed, concurrent monitoring to ensure regular compliance leaves a lot to be desired. Thus, it is that many schools remain under the radar with violations going unnoticed.

Discussion

Against the backdrop of weak state capacity, we saw how bureaucracies tend to prefer mechanical regulation over monitoring. Part of the reason for this is low capacity but part of it is also lack of discretion at their level. Discretion is required to deal with the different situations frontline bureaucrats encounter while monitoring compliance, and the lack of it means that they are forced to rely on mechanical checks alone or else be held accountable for flouting rules. Unsurprisingly, therefore, the recent Economic Survey has noted that regulations per se cannot substitute monitoring for real and effective implementation of goals.

At the same time, however, the monitors of regulation must also be made accountable. The survey therefore offers three ideas, which aim to maintain a degree of discretion with the monitors, while ensuring that they are held accountable as well. These suggestions have important takeaways with respect to regulation of the non-state as well. First, instead of focussing on audits which usually happen post facto, it is critical to build in strong accountability measures through the entire regulatory process. Second, the decision-making process should be made transparent and balanced with discretion. And finally, there is a need for a robust resolution and grievance redressal mechanism.

²⁴ While the Child Rights Commissions that monitor compliance based on RTE are meant to be independent bodies, answerable only to the Parliament of India, the budgets for RTE monitoring are allocated by the Ministry of Education. Hence, the low financial capacity of the Ministry of Education is reflected on to the Commissions as well.

These recommendations aside, two other points are worth noting. First, given the complexity of the different rules and compliance processes which are spread across multiple bodies, there is a need to ensure that all compliance norms are available in one place. This increased transparency within the system would enable, it is believed, better compliance as misinformation or lack of clarity was reported as a constraint. Second, is of course transparency to the citizens or the public - stemming again from the need to protect the public good aspect of education provisioning. Accordingly, the Economic Survey 2021 calls for the need to enact a Transparency of Rules Act to ensure the “greatest extent of access to information for citizens”. Some of the reforms suggested in the Economic Survey for this Act include keeping updated and integrated records of laws and regulations, publishing citizen-facing rules on official websites etc. Transparency thus impacts the citizens and their choices directly, but also improves the regulatory process.

In the next section we will look at some of the current measures of transparency for non-state provisioning

5.3. Transparency

Movements for the Right to Information (RTI) and citizen participation that have raised transparency and accountability as cornerstones of democratic functioning, have been fairly successful in including these concepts into the lexicon of public functioning, at least on paper. In India, the Right to Information Act (RTI) implemented in 2005, is regarded as a landmark legislation and among the strongest in the world. It has served to pry open opaque government procedures and made a range of documents available to the public, whilst also mandating *suo moto* disclosures of important information. Section 4(1)(2) of the RTI Act for instance refers to the endeavour by every public authority to provide “as much information suo motu to the public at regular intervals through various means of communications, including internet, so that the public have minimum resort to the use of this Act to obtain information”²⁵.

Unfortunately, the RTI does not apply to most non-state actors except in the case in which they receive substantial State funding. The definition of public authority in the Act under Section 2(h) includes a “body owned, controlled or substantially financed” or a “non-Government organisation substantially financed” (RTI Act, 2005). The Act however does not define what constitutes as substantial leaving it open for interpretation.

²⁵ <https://indiankanoon.org/doc/13503/>

Moreover, effective transparency involves more than legislation. It must also ensure that policies and directives are easily understood, and information that is in public interest is available in an accessible manner and the role and responsibilities of various actors clearly defined. This is severely lacking in the case of regulation of the non-state in education, as we see in the next section.

Lack of Transparency in Operational aspects of Regulations

Most of our sample states have put up the state rules of the RTE Act, and their own Acts and guidelines related to regulation of private schools in the public domain. However, there is little information available on some of the operational aspects of these regulations such as teacher salaries, school fees etc. This is partly because the government guidelines are themselves quite broad in terms of suggesting any minimum or maximum criteria. Interviews with the private school teachers revealed that in many instances, it is the management committee of the school (not to be confused by SMC, which private schools are not required to form) that decides on salaries to be paid to teachers and the fees to be charged. The 6 states we studied, all schools were required to publicly declare their fees. In every other aspect, there were state-wise variations. For instance, private schools in Uttar Pradesh and Himachal Pradesh are required to make public disclosure of the teacher salary as well. And, in Tamil Nadu a state-level committee publicly puts out the fee set in different schools in a [district-wise manner](#) as well.

One important aspect of private schools is the reimbursements they receive from the state government for enrolling children under Section 12 (1)(C) of the RTE Act. However, most state governments are not transparent in making the per-child expenditures public. Moreover, even the process of calculating per-student reimbursement amounts is opaque in most states (Sarin, Dongre, & Wad, 2017). In our sample states, Rajasthan stands out for maintaining a detailed online portal, popularly known as private school portal (refer to Table 12 above), through which all the applications received under the RTE provision of 25% reservation, and the reimbursements for private schools are processed. The portal even has the method of calculating per-child expenditure along with actual values. Unfortunately though the portal has not been updated recently and the latest information currently available in the portal is for FY 2017-18. Similarly, Uttar Pradesh's Basic Education Department maintains a dedicated portal for implementation Section 12(1)(C) under RTE Act, that provides all the relevant information including online application option, list of mapped schools, admission process with required documentation, lottery results, and seat allotment results. However, there is no information available on how the per-child expenditure is calculated and the exact amount.

Information Asymmetry and Need for Accessible Data

Effective data use can enable impactful interaction with the schools, for all the different stakeholders involved. Earl and Katz (Earl & Katz, 2006) argue that it can lead to better identification of successes and challenges, areas that need improvement, and assess different practices and interventions. Publicly available information can also help parents and citizens make informed schooling choices for their children and to hold the school administration and government accountable. With this objective, the RTE Act mandates, “transparent public disclosure of all regulatory information, which can be used extensively for public oversight and accountability”. The NEP, 2020 too emphasizes public disclosure of the results of the regulatory framework, offline as well as online. The information to be disclosed for both public and private schools must include, “information on the numbers of classrooms, students, and teachers, subjects taught, any fees, and overall student outcomes on standardized evaluations such as the NAS and SAS”, as noted by the NEP.

However, there are no transparency or accountability norms that apply specifically to non-state schools in the country. Instead, what we have is a system of publicly available school data. One of the single largest databases currently available on school education in India is U-DISE Plus, a Union government led initiative to create an educational management information system on key school-level indicators. The U-DISE Data Capture Format (DCF) annually captures input information regarding school profile (such as management-type, language of instruction, sources of funding, etc.), enrolment data, teacher provisions (such as qualification of teachers), infrastructure, provision of RTE Section 12 (1)(c), examination results, etc. The data is to be made publicly available through the UDISE Plus online portal. Apart from reports, online dashboards, and raw data, there is a module called “Know Your School” (<https://src.udiseplus.gov.in/>), which provides a 2-pager snapshot for each individual school in the country, *including the non-state schools*. Moreover, to ensure that students can access schools within a reasonable distance of any habitation, a geo-spatial mapping of each school was done and linked with their U-DISE data and available on the school GIS Web enabled platform (<http://schoolgis.nic.in>).

The availability of detailed school level data is definitely an important first step in reducing information asymmetries - but there are some concerns. *First*, there is generally a lag of two years in making the information public because of the time taken in data collection, validation, collation and cleaning. The latest data is currently available for the academic year 2019-20. *Second*, since the data is available online it excludes a significant part of the population. A survey of 154 parents found that even within public schools, only 10% of parents knew about the existence of this data and only 2% logged on to the portal to access school-level data. *Lastly*, U-DISE data still pertains only to input metrics and does not have information available on learning

levels, one of the three indicators (apart from availability of qualified teachers and infrastructure facilities in schools which ensure safety and hygiene) that parents interviewed stated they wanted information on. (Ibid)

Apart from U-DISE, which is a national initiative, state governments also maintain different websites and portals to make information about the school system public. In **Table 10**, we look at the different publicly available websites that our states have in the education sector.

Table 10 : Open data on schools across the six sample states

State	Name of Portal	Overview
Himachal Pradesh		Does not have a dedicated portal for school data in the public domain. State education department officials confirmed that they use U-DISE plus data.
Punjab	e-Punjab	A multi-purpose MIS portal that provides citizens with individual school report cards along with basic state-level data compilations and an online admission application. Additionally, it allows for online application for schools seeking affiliation with CBSE/ICSE and RTE recognition.
Rajasthan	1. ShalaDarpan	“Live data” of government and government-aided schools and education offices is maintained.
	2. Jan Soochna Portal	The portal makes available granular data about a range of social welfare schemes including school report cards and area-wise school information.
	3. Private school portal	It allows private schools to update information, specifically regarding admissions under RTE Section 12(1)(c), themselves. Moreover, it puts relevant information such as regarding vacancies in private schools in the public domain.
Uttar Pradesh	UP RTE Portal	The portal provides citizens with necessary general information regarding admissions and allows them to register grievances or complaints online. Moreover, it also has relevant information regarding Section 12(1)(c) such as lottery results, seat allotment results, fee reimbursement details, etc.
Tamil Nadu	Tamil Nadu RTE portal	The state education department maintains this portal for parents to submit online applications for admission under 12(1)C. It has the list of private schools in each district, the documents required to be submitted with application and district-wise contact information of RTE coordinators.
Telangana	Education ISMS System	A multi-purpose MIS portal that provides district level data of school performance, learning levels, infrastructure, student tracking, weekly attendance, among other factors.

As seen in the **Table 10** above, many states do have online web portals with certain types of information publicly available. However, here too not all the web portals provide the most updated information or even

complete set of information. For instance, while Rajasthan and Punjab do have MISs that make updated school-level data available publicly, Himachal Pradesh, Uttar Pradesh, and Tamil Nadu do not have such portals. But, Telangana provides district-wise data which includes learning levels and weekly attendance, as well. For non-state schools specifically, the variation in the amount of data available publicly is even starker. For instance, Rajasthan's private school portal has specific information about each private school in the state, and their compliance to RTE 12(1)(C) mandate. On the other hand, Himachal Pradesh does not have any public database with detailed information about private schools.

It is clear that while there is information available in the public domain, it varies significantly both across states but also in their content, disaggregation and frequency. Further, the challenge of putting information only online often makes it inaccessible to large sections of the society. In theory, UDISE school report cards should be placed in all schools to allow parents to know the current status of different schools and make informed choices. Unfortunately, there has not been any large-scale awareness campaigns on this nor on the usage of these school report cards. **The lack of efforts to increase parental awareness and participation makes it difficult for parents to hold service providers (both public and private) accountable.**

6. Supplementary Services: Regulation of Non-State Actors

Some of the most common supplementary services related to school education, include training of teachers in teacher education institutes (TEIs), textbook designing and publishing, provisioning of MDM in schools, and supply of additional teachers to schools. In this section, we look at the role of non-state actors in providing these services, and the government's regulatory mechanisms for them. In doing so, we try to understand compliance of these regulations and government monitoring, based on the field level interviews with a range of stakeholders.

It is worth noting at the outset that for supplementary services, unlike provisioning of schools, there are fewer general rules or guidelines for entry and exit for private providers. This means there are several parallel regulatory frameworks governing different services. While this may seem inefficient, it is important to note that any one set of guidelines covering services as disparate as teacher education and MDM would be inadequate at best. Instead, having detailed and separate regulatory and monitoring frameworks for these services is necessary for their effective implementation. As we will see further in this section, specific services, especially MDM, do have fairly detailed norms regarding who qualifies as an MDM provider, but for textbooks and additional teacher providers, for instance, there are hardly any clear-cut norms in place.

In the absence of general overarching regulatory guidelines, we tried to understand how government officials perceive regulation of supplementary services, based on the interviews conducted. Overall, the block and district education officials were of the view that the current regulatory processes for supplementary services are insufficient. In light of rudimentary guidelines, the lack of state capacity to conduct the tasks of monitoring and regulation imply that the officials feel unable to do the job. While human and physical resources were listed as being insufficient, it was the shortfall in financial resources that were reported as the most binding by the officials. As also found in a study of the government's monitoring architecture for education (Bhatty & Saraf, 2016), it was not just lack of vehicles to visit schools, but even an allowance to cover petrol costs that made it difficult for the officials to conduct monitoring visits.

In the next few sections, we look at four specific supplementary services.

6.1. Teacher Education Institutes (TEIs)

Of all the supplementary services that exist, TEIs are the most dominated by non-state actors. Of a total of 17,503 Teachers Education Institutions (TEIs) in India with an intake capacity sufficient to prepare 18,86,028 teachers, more than 15,000 institutes, or around 92 percent are privately run (APU, 2021). Of the 15,000, a majority (64 percent), offer only a single teacher education program, such as Bachelor of Education (B.Ed) or Bachelor of Elementary Education (B.El.Ed). There is also large regional differentiation in the spread of these institutes. Four states, namely Uttar Pradesh, Rajasthan, Tamil Nadu, and Maharashtra account for more than half of all the TEIs in the country. To be eligible to teach as an elementary school teacher, it is necessary to pass the Teacher Eligibility Test (TET). Despite having such a high number of institutes, the pass percentage of TET remains only around 10 percent. Interestingly, in states that have a high density of TEIs, the percentage of candidates qualifying TET is lower than in states with a relatively lower density of TEIs (APU, 2021).

The poor quality of teacher education in India has been noted in the Kasturirangan Committee Report submitted to MoE in 2019, for drafting of NEP 2020. Commenting on the TEI landscape, the Committee noted that a large proportion of TEIs are not invested in providing a good education. Critically, it observed that **“many [TEIs] are functioning as commercial shops where even the minimum curricular or course requirements are not met, and where degrees are essentially available for a price. The integrity of teacher education cannot be attained without first shutting down this practice”** (as quoted in the draft NEP, 2019²⁶). It went on to comment that the regulatory practises in place have failed to curb corruption, ensure quality levels, and on the contrary had the effect of curbing innovations. The Azim Premji University report, 2021 looking into the functioning of TEIs came to similar conclusions. It detailed some of the rampant corrupt practises and deficiencies in TEIs. Most of the TEIs surveyed by APU did not have the required number of teachers as per NCTE norms and private TEIs adopted several corrupt practises to escape scrutiny. These practises included: (i) not hiring dedicated faculty for different subjects; same faculty teaches across subjects; (ii) hiring faculty part-time and allowing them to teach in multiple institutions; and (iii) coercing faculty to appear full-time during inspections. Several of the infrastructure and facility norms were also flouted. This under-provisioning of institutional facilities was sustained by sharing the same resources across several institutions under the same management (APU, 2021).

²⁶ Available online at: https://www.education.gov.in/sites/upload_files/mhrd/files/Draft_NEP_2019_EN_Revised.pdf

6.1.1. Regulatory Framework

National Council for Teacher Education (NCTE)

The National Council for Teacher Education Act, 1993 provided for the establishment of the National Council for Teacher Education (NCTE) to coordinate and synchronize the development of teacher education, and to regulate and ensure the maintenance of norms and standards in the teacher education system. According to the Act, the NCTE is required to lay down guidelines for the minimum qualification of teachers at the TEIs, the eligibility criteria for admission of students, the duration and content of courses, fees charged, etc. (NCTE Act, 1993). To get accreditation, State and non-state TEIs are required to apply to four Regional Committees, established by NCTE. These are elaborated below.

Regulation for Entry of TEIs

According to the NCTE 2005 Guidelines [that supplement the 1993 NCTE Act], institutes can apply to the Regional Committees along with the requisite documents and application fees to get accreditation. The documents to be submitted by the applying institute include a copy of the approved building plan, a fixed deposit receipt in original for ₹ 5.00 lakh, a copy each of the Certificate of Registration, Memorandum of Association, and By-laws in case the institution is managed by a society or board (NCTE Guidelines, 2005). The norms regarding instructional facilities vary depending on the courses offered. For example, for institutes that offer elementary teacher education programs, a multi-purpose educational laboratory with psychology and science sections with an attached workshop is a requirement but not for institutes offering courses for Nursery and Pre-School Teacher Education Programmes. In terms of the process, for an institution to be allowed to start a programme, the application should be processed 2 months before the start of the academic sessions. Within 30 days of receiving the application and launching the website, the inspection of infrastructure, equipment, and instructional facilities is to be completed. In case of any discrepancy in information submitted, time is given to address the issue, and the matter progresses to the next level of approval. If the timelines are strictly followed, it should take not more than a year to process the application. In case of refusing recognition, the institution should be given a “reasonable opportunity” to appeal against the proposed order. NCTE offers a [website](#) to allow institutions to appeal.

Based on our interviews, **the accreditation process in practice reflects this arbitrary nature of the use of rules and regulations.** We interviewed five respondents from private TEIs from four states-- one each from Himachal Pradesh, Uttar Pradesh, and Rajasthan and two from Punjab. The respondents from Himachal Pradesh, Rajasthan, and one from said that they received their accreditation from the NCTE. Whereas the other

respondents from Punjab and Uttar Pradesh reported getting accredited from the state education department. All respondents said that there was an “on-field” inspection of the infrastructure and facility during the accreditation process. Unlike what is stated in the guidelines, there was no fixed time period for the accreditation process. Only the respondent from Uttar Pradesh reported getting recognition within the stipulated time. The maximum time period reported by our respondents was 5 years- more than five times the time period in the guideline. The Justice Verma Commission report (MHRD, 2012), hereafter referred to as JVC Report, notes that typical reasons for these delays are: (i) delays in receipt of recommendations of the State Government, (ii) delays on the part of the institution in addressing the deficiencies, (iii) delays in inspections due to lack of human resources, and (iv) Regional Committee members not working regularly (MHRD, 2012).

6.1.2. Operational Requirements

The minimum qualification of the teachers in TEIs

Minimum qualification of teachers for the different courses offered have been set by NCTE. For example, to teach a course in elementary education, the teacher must have a senior secondary school certificate and a B.El.Ed degree or diploma in basic teacher’s training of a duration of not less than 2 years; whereas to teach a course on secondary/higher education, the teachers must have either a B.Ed. or equivalent (NCTE Regulations, 2001). Interestingly, the guidelines do not mention prior teaching experience as a requirement, implying that fresh graduates are eligible to teach potential teachers.

Fees to be charged

The NCTE also lays down regulations regarding the fees that recognized institutes can charge. These are to be determined by state-level committees (separate from the Regional Committees) set up by the NCTE (NCTE Notification, 2002). These stipulated fees are divided into two categories: tuition fees and development fees. The former is estimated on the basis of the actual costs, including salary and allowances of the staff, expenditure on administrative services, maintenance cost of infrastructure, cost of resource materials like books and journals etc. Development fees, on the other hand, is meant to be a source of recovery of capital costs and serves as a source of revenue for the upkeep and replacement of infrastructure. At least 50% of the available seats are to be considered 'Free Seats' and the other 50% can be 'Payment Seats' (NCTE Notification, 2002). However, the nomenclature ‘free’ is misleading here as these seats are not actually ‘free’, i.e, there is a fee (‘stipulated fee’) that is charged for these seats as well. The stipulated fees for the Free Seats are fixed in accordance with the NCTE guidelines. Payment seats can charge more than the stipulated fees.

6.1.3. Monitoring Compliance

The NCTE Act, 1993 empowers the Council to undertake inspections to ensure compliance. The Council is required to communicate with the institute the date of inspections and any observations or recommendations they may have based on the inspection. There have however been concerns about the nature of these inspections. For instance, the JVC Report, 2012, noted that while the NCTE organises yearly inspection of TEIs in different regions, these inspections are not exhaustive and the TEIs to be inspected are selected at random.

There were state differences in the agency monitoring the TEIs as well. The respondents from Himachal Pradesh and Rajasthan reported that their TEIs were monitored by the SCERT. In the case of Himachal Pradesh, the respondents said they were monitored by the Himachal Pradesh University as well. One of the respondents from Punjab said that their institute was monitored by both the SCERT and DIET. The other respondent from Punjab as well as the respondent from Uttar Pradesh reported being monitored by a separate committee appointed by the state. None of the states reported monitoring by the BEO. The mode of monitoring also varies. While all respondents confirmed that on-site visits were part of the monitoring process, in two states (Himachal and Rajasthan), their complaints register was checked too and in Uttar Pradesh and Rajasthan textbooks had to be periodically submitted for checks as well.

6.1.4. Accountability and Transparency in Financial Norms

Accountability and transparency norms appear to relate largely to financial matters. As such, every institute is required to maintain two separate accounts, namely the Maintenance Accounts and the Development Accounts (NCTE Notification, 2002). Proceeds of tuition fees and other miscellaneous fees like hostel charges are recorded in the maintenance accounts. All recurring expenditures such as salaries and maintenance need to be met from the maintenance account. At least half of the proceeds of the development fees are to be credited to the development account in the first 10 years of the institution. After this, the entire proceeds of the development fees must go into the development account (NCTE Notification, 2002). The proceeds of these fees are to be used for the procurement of resources and equipment such as books and journals. To ensure that these guidelines are being followed, the accounts of State and non-state TEIs need to be audited annually by either the government audit authority or by a chartered accountant. Additionally, the TEIs are required to maintain and put on their official website updated accounts with the following details: i) balance sheet as on the last date of the financial year, ii) profit and loss account for the financial year, and iii) receipt and payment account for the financial year.

6.1.5. Discussion

On paper, the legislation and guidelines in place for the establishment and monitoring of private/non-state teacher education institutes appear to be fairly robust. They cover a range of requirements, from financial viability, organizational credibility, infrastructure adequacy, and issues of concern regarding human resource deployment - qualifications, wages, etc. These guidelines appear to be in accordance with the core aims of ensuring quality while maintaining the not-for-profit character of the establishment. Further, timelines for conducting and concluding the process of granting accreditation are also in place and appear to be reasonable.

What does appear to be missing in the guidelines is a reference to a process of ongoing monitoring of the institutes after their establishment. NCTE organizes inspection of TEIs but only annually and that too of only a few randomly selected TEIs. Thus, a large number of TEIs are not monitored regularly. **In 2010-11, less than 2 percent of the TEIs were inspected** (MHRD, 2012). Apart from the requirement of auditing accounts (or submitting them for scrutiny), there do not appear to be any guidelines for checking on the functioning of the institutes regularly. There are no system of reviews or evaluation either of the maintenance of quality or even of the other requirements that gained them their accreditation in the first place. This appears to be a major lacuna in the systemic arrangements of regulation of the TEIs.

One of the possible reasons for the lack of a robust monitoring structure, as pointed out by the JVC report, 2012, is the lack of trained officials capable of carrying out this task. The report also noted that inspections needed to be more thorough, instead of a focus on facilities and infrastructure (MHRD, 2012). It recommended that inspections should monitor issues such as (i) teachers' and students' attendance, (ii) condition and usability of library facilities, (iii) learning material used by teachers, (iv) student performance among other things. Finally, the JVC report pointed out that often the inspection team is not trained or equipped to undertake inspections of TEIs (MHRD, 2012).

Another guideline that strikes a less than appropriate chord is that of qualifications for the teachers in the training Institute, which appear to be below par. This is surprising as the qualifications for teachers in schools, even primary schools, have now been set at a minimum bar of a bachelor's degree. For teachers in TEIs who are going to be responsible for training incoming teachers to be at the same education level and for experience not to be mentioned as an additional requirement, does raise a question about the quality of teacher education being envisaged.

Further, as our survey with officials from TEIs show, the inspections appear to have been conducted in a less than satisfactory manner, as respondents from Punjab either did not have a website or did not publish the requisite information on their website- a requirement for acquiring accreditation - compromising the transparency and accountability criterion. In general, monitoring does not seem to be on the agenda, at least of the NCTE. This may not be a shortfall, given the federal nature of the polity and the devolution of education to states and sub-state units. Unfortunately, state-level guidelines or systems of monitoring do not appear to be in place either. While all states reported some form of on-site visits, no further details were available. Barring Himachal Pradesh, where the state university has a role to play, albeit unspecified, none of the other states have an established system of monitoring teacher education institutes.

Unsurprisingly, the majority of the government school teachers interviewed as part of this study (22 of the 25 teachers), reported that they were trained in government facilities. The main reason, given by teachers, for choosing government institutions was that they were cheaper and the quality of training provided was better than received in private training institutes. The teachers also believed that it was easier to get a job in government schools if the training is received from a government institute.

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6.2. Textbooks

Another area where non-state actors have a sizable presence is designing content for school textbooks and publishing. In this process, private providers are required to follow the curriculum approved by the government. However, in the past, there have been concerns regarding the content of textbooks prepared by private actors. The Central Advisory Board for Education (CABE) committee was asked to assess whether the textbooks produced by private institutions followed the curriculum framework approved by it, and the regulations set by the earlier National Policy on Education, 1986 (NPE, 1986), taking account of the multi-ethnic, multicultural nature of the country. The textbooks published by private publishers and examined by the CABE Committee, displayed an underlying communal bias in their understanding of Indian history, society,

and culture. The report noted that the textbooks "teach a 'history' swamped by myths, false scriptural attribution, and concocted claims for India's greatness" (CABE, 2005). These textbooks were filled with "narrow polemics" that failed to explore "areas of composite culture, syncretism, and ideas" (Ibid). The clearest bias was against minority religions. The report went so far as to note that such textbooks "deny India's composite culture, endorse caste hierarchies... and mobilise a culture of violence that disregards the law". Additionally, such textbooks also invisibilised the experiences of marginalised groups such as that of oppressed castes, women, and religious minorities. This paints a worrying picture of the state of the parallel institution of textbook publishers.

6.2.1. Regulatory Framework

The National Council of Education Research and Training (NCERT) is the national academic wing of the Department of School Education and Literacy. NCERT is entrusted to undertake research on school education and prepare and publish 'model' textbooks, supplementary material, journals, etc., among other things. 'Model' textbooks provide a framework for the content for different subjects and various levels. In theory, these can then be adapted by other publishers-- government as well as private-- to suit their different contexts. At the state level, analogous to NCERT, there are State Council of Education Research and Training (SCERT) institutes.

The National Curriculum Framework (NCF) (NCERT, 2005) is the primary source of regulation for textbooks. Even this however, provides only very general guiding principles for developing curriculum and pedagogical practices. For instance, it states that textbooks should abide by the "guiding principles and values of the Constitution (especially equality, secularism, and democracy), the aims of education, authenticity and developmental appropriateness of the content, and so on" (NCERT, 2005). It also recommends that there should be a regulatory framework in place to ensure this. At the same time, the NCF encourages a multiplicity of textbooks and pedagogical practices "as they widen teachers' choices and also provide for the incorporation of diversity in relation to children's needs and interests". However, as noted above, no structure has been put in place to regulate and monitor textbooks produced by private publishers. Reports that surveyed the quality and content of these textbooks found them to be below standard; they had misleading information, as well as sexist and communal stereotypes. Similarly, while the textbooks used in government schools were closely monitored, the textbooks being used in private schools were not.

6.2.2. Compliance

In practice, regulations with respect to monitoring curriculum are not in place, as noted by the CABE Report in the past (CABE, 2005). The report underlines the urgent need to introduce appropriate measures to regulate and monitor textbooks used in non-state institutes and privately published textbooks. Government schools are required to use textbooks approved by the government, but as noted in the Report, there are wide state-wise differences between the approval mechanism of textbooks. For instance, Uttar Pradesh has a council to approve a panel of authors. Schools are therefore free to choose books by these authors, including textbooks published privately by the approved authors. However, there is no mechanism to ensure that this is followed. Himachal Pradesh (along with Delhi, Haryana, West Bengal, and Nagaland) allows the use of textbooks published by private publishers but approved by the respective syllabus committees of these states. While this process is followed for governmental schools, the CABE Report did not find a similar process is for private schools. In general, non-state schools have the freedom to choose non-state-approved publishers and textbooks. As such, there is no real mechanism in place to monitor the kind of textbooks in circulation outside of the government system. The CABE investigation revealed that in practice, many private schools use books published privately that have not gone through any vetting or approval process (CABE, 2005).

To better understand the fragmented regulatory mechanism in place for privately published textbooks, we talked to two NCERT professors. They confirmed that there was no accreditation mechanism for private publishers. The regulations were in place mostly for government bodies, such as SCERTS or state boards that published textbooks. Similarly, they said that there was no monitoring of private schools and the textbooks that they used. They further confirmed that NCF, 2005 was the only document that had some guidelines regarding content and syllabi. However, there is no monitoring mechanism in place to ensure that private publishers abide by the principles outlined in NCF, 2005.

We also interviewed five private publishers: one from Punjab, Rajasthan, Uttar Pradesh, and two from Himachal Pradesh. All the respondents reported following NCERT or SCERT or State Board syllabi and the framework provided by their model textbooks. However, our interviewee from NCERT remarked that this is often declared by private publishers without necessarily following the NCERT framework. These interviews revealed that across the states, the textbooks published by private providers were used in private schools. Interestingly, the private publishers from Uttar Pradesh and Himachal Pradesh reported that their textbooks were being used in public schools as well. The publishers reported that they generally approach the public schools directly to supply their textbooks and deliver the textbooks directly to schools. Additionally, the private publishers in Rajasthan and Himachal Pradesh shared that they send the textbooks to retailers as well. The respondent from Himachal Pradesh was the only respondent to rely on a third-party distributor (**Table 11**).

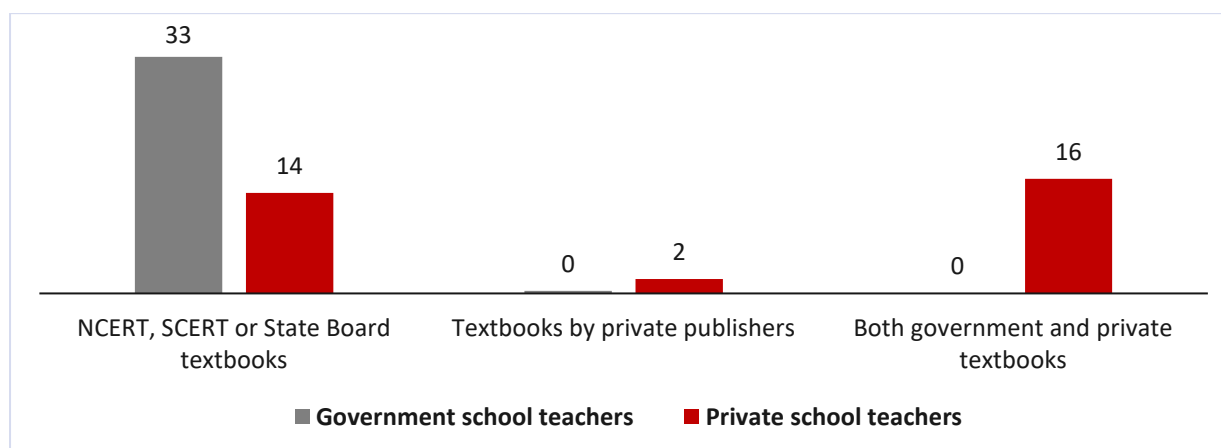
Table 11 : Insights from a few private publishers of textbooks

	Are your textbooks used in private schools, public schools, or both?	Once textbooks are published, who do you deliver them to?	Are you aware of any content related guidelines for textbooks?
Rajasthan	Private	Directly to Schools and Retailers	National Level
Himachal Pradesh	Private	Directly to Schools	State Level
Himachal Pradesh	Both	Directly to Schools, Retailers, outsourced to a third party for distribution	Both National & State Level
Punjab	Private	Directly to Schools	Both National & State Level
Uttar Pradesh	Both	Directly to Schools	Both National & State Level

Source: Interviews conducted with private publishers, March-April, 2021

In our interview with teachers, all of the government school teachers reported that they use only NCERT, SCERT, or State Board textbooks. On the contrary, **less than half of the private school teachers reported the use of government-published textbooks exclusively.** Of the 32 private school teachers and head teachers interviewed, only two reported using privately published textbooks exclusively. Instead, half of the private teachers said that they use a mixture of textbooks published by both government and private publishers. Interestingly, around 60 percent of government school teachers (15 of the 25 teachers) believed that the content of textbooks should be regulated across private and government schools so that learning levels across all types of schools can be standardized and the good quality content can be ensured (**Figure 11**).

Figure 11 : Teachers' views from six states on publishers of textbooks used in schools: Government vs. private schools (Number of teachers)



Source: Interviews with 33 government school teachers and 32 private school teachers across 6 Indian states, March 2021

In our interviews with block and district officials, we see similar results. Almost all the respondents said that only government schools were required to use government-accredited textbooks (17 out of 23) and all the respondents said that this norm was followed in government schools in their jurisdictions. On the other hand, 14 of the 23 respondents admitted that there was no mechanism to monitor privately published textbooks. Thus, while the use of textbooks in government schools is a subject of close scrutiny, private publishers are not monitored closely. One of the respondents from Himachal Pradesh noted that the regulations and monitoring systems were not being followed stringently. He suggested that strict and timely rules need to be formulated to ensure compliance. On the other hand, the respondent from Punjab said that the regulations needed to be more flexible.

At the same time, privately published textbooks continue to be in circulation. When we asked local officials about why they think private textbooks are in circulation the two main reasons given were a) they are easier for teachers to use and b) children (and their parents) prefer these textbooks. The preference for privately published books was echoed by the textbook publishers as well who also listed the same reasons for the wide use of privately published textbooks, i.e, better quality of the textbooks, easier to use, and children preferred them. No further explanations were provided however by either on why they felt the books were “easier for teachers to use” or why children or their parents preferred them.

6.2.3. Discussion

From the information available, it appears that the NCF, 2005 provides guidance on the norms for curriculum and textbook development. It also laid down the need for a process of regulating and monitoring textbooks used in private schools as well as those published by private publishers that may find their way into State or non-state schools (NCERT, 2005). Moreover, there are both national frameworks and standards set by the NCERT and state-level frameworks set by SCERT for the content and publication of textbooks. However, in the absence of clear-cut boundaries for various government bodies, in many states, the various education boards have also started producing textbooks even though it falls outside their ambit. This has led to parallel systems of curriculum and model textbooks being published, which complicates the monitoring of textbooks used in schools.

As far as State schools are concerned, there exists a variety of mechanisms to oversee textbooks at the state level, but these tend to focus on form more than content. These mechanisms are as diverse as having a

committee to approve ‘authors’ (Uttar Pradesh) rather than content, or approve syllabi (Himachal Pradesh) and then leave it to publishers to develop the actual content of the textbooks. While these norms are loosely in place for government schools, there appear to be no norms for private schools. Hence, private schools are free to use textbooks and publishers of their choice, with no monitoring or regulation of the form or content of the books being used.

The CAFE Report (CAFE, 2005) also noted that most states have created state-level bodies to prepare syllabi and textbooks and have a mechanism in place for the approval of textbook content. However, there is no single body that oversees this task across states. Both the NCERT respondents we spoke to, emphasized that the processes followed and the implementing agency differs from state to state. According to one respondent, the monitoring and regulation framework depends on which education-related body has more “influence” in a particular state. For example, in Punjab, the SCERTs were defunct and thus the state education board was more influential and they took over the task of preparing textbooks. This is often, though not exclusively, the case for subjects for which NCERT or SCERT does not have model textbooks prepared, such as Home Science, until recently.

Moreover, the CAFE Report (CAFE, 2005) underlined some crucial lapses in the approval process. For instance, the report noted that textbook production was done mechanically without addressing core curricular concerns outlined in the NPE, 1986. There is a lack of a proper system of assessing whether textbooks are adhering to the aims of education policy. Finally, it said that due to an overemphasis on the form of the textbooks, there is little attention being given to the content of textbooks.

6.3. Mid-Day Meal

The National Programme of Mid-Day Meal (MDM) in School is a flagship scheme of the government that seeks to provide school-based feeding aimed to improve the nutritional status of students and promote universalisation of elementary education. It is based on the provisions of the National Food Security Act, 2013²⁷ (NFSA) that is aimed at food and nutritional security through the life cycle of a citizen. As such, Section 5 of the NFSA stipulates that children up to Grade 8, should be provided with one free cooked mid-day meal in all schools, for a minimum of 200 days a year. There are specific guidelines regarding the content and

²⁷ NFSA can be accessed online at: <https://nfsa.gov.in/portal/nfsa-act>

nutritional value of these meals, as well as standards of hygiene, timely delivery of meals, and quality of meals. These apply to non-state providers as well.

6.3.1. Regulatory Framework

There are several eligibility criteria that an organisation looking to provide MDM to students is required to meet. Firstly, the CSO/NGO/Volunteer Organisation (VO) should have been in existence for at least two years prior and registered under the Society Registration Act or the Public Trust Act. It should have a management body with its powers and duties clearly defined. Moreover, the CSO/NGO taking over the functioning of centralised kitchens²⁸ should have a "local presence" and "familiarity with the needs and cultures of the State"²⁹. The CSO/NGO is also required to acquire a license from the Food Safety and Standards Authority of India (FSSAI). Additionally, the CSO/NGO must also submit a commitment to a) provide MDM on a no-profit basis, b) adhere to any MDM guidelines issued by the MoE and c) work cooperatively with local governments (Panchayati Raj institutes or Municipal bodies) as required by the state government. The CSO/NGO must also demonstrate the financial and logistical capability to supply MDM at the requisite scale.

The guidelines list certain financial norms. The CSO/NGO is required to prepare a monthly report on the lifting and utilisation of food grains. They are supposed to produce bills for the same by the 7th of each month which will be reimbursed by the state government within a week of receiving these bills. Further, they are required to submit an Annual Report along with audited statements of accounts with all the terms of grants received from the state government and donations received for the MDM Scheme. All the accounts, stocks, and registers maintained by the CSO/NGO should be open to inspection by officers of both the state and Union government.

6.3.2. Operational Requirements

There are certain operational norms that CSO/NGOs are required to abide by. Firstly, the duration of the agreement with the CSO/NGO needs to be clearly mentioned (MDM (Amendment) Rules, 2017)³⁰. The agreement can be extended after approval by the appropriate authority. The performance of CSO/NGO is to

²⁸ Centralised kitchens are off-school infrastructure, where the food for one or more schools is prepared and then delivered to the schools.

²⁹ Mid-Day Meal (Amendment) Rules, 2017, Department of School Education & Literacy, Ministry of Human Resource Development, Government of India, June, 2017. Available online at: http://mdm.nic.in/mdm_website/Files/OrderCirculars/2017/MDM_Rules_amendment_2017.pdf

³⁰ MDM (Amendment) Rules, 2017, MHRD, Government of India. Available online at: http://mdm.nic.in/mdm_website/Files/OrderCirculars/2017/MDM_Rules_amendment_2017.pdf

be assessed every year through a credible system of assessment. The renewal of MOU depends on these evaluations.

In addition, there are several operational requirements to ensure that proper hygiene and safety norms are maintained. The CSO/NGO are required to store food grains and other material in hygienic conditions free of pests, insects, and fungus³¹. The drinking water needs to be tested for portability as per the schedule decided by the state government. The packed food grains and cooking materials need to have the AGMARK³² or the FSSAI quality symbol. Food articles are required to be used on a 'First In, First Out' basis and their shelf life needs to be checked periodically. The meals should be served in quality sealed stainless-steel containers. The temperature of the food when being served should be at or above 65 degree Celsius. Centralised kitchen should have adequate fire safety measures. The cooked MDM should be transported and consumed by students within four hours of being cooked. Further, CSO/NGOs need to train Cooker-cum-Helpers (CCH) on health, food safety, hygiene and methods of cooking at regular intervals. CCHs also need to be provided with aprons, head-gears, and gloves. They should also be checked to ensure they are free of any contagious diseases. CSO/NGOs are required to arrange medical check-ups of CCHs at least once every six months. While several such guidelines and norms exist with respect to entry, there were however no regulations or guidelines regarding the withdrawal or exit of CSO/NGOs in MDM provisioning.

6.3.3. Compliance

Our interviews with the Block and District officials revealed that there are robust regulatory and monitoring mechanisms in place for MDM. Almost all the respondents at the block and district level (18 out of 23) said that there were mechanisms in place to ensure that MDM is provided for the stipulated 200 days. Moreover, according to respondents the quality and quantity of the food provided were checked by the teachers (21 out of 23), local community or SMCs (20 out of 23), and officials from the education department (15 out of 23). Similarly, the centralised kitchens where food was prepared was inspected by teachers and the local community.

All the teachers interviewed from Rajasthan and Telangana reported that MDM was provided in their schools by private organisations. In contrast, none of the teachers from the remaining four states (Uttar Pradesh,

³¹ The 2006 guidelines were revised in 2017.

³² AGMARK is a certification mark employed on agricultural products in India, assuring that they conform to a set of standards approved by the Directorate of Marketing and Inspection

Punjab, Tamil Nadu and Himachal Pradesh) reported the involvement of private players in provisioning of MDM. In both Rajasthan and Telangana, the International Society for Krishna Consciousness (ISKCON) Foundation, a Hindu missionary organisation, along with its associated organisation Akshaya Patra Foundation, was involved in providing MDM to schools. The government school teachers were generally satisfied with the quality of meals provided by these providers.

Of the 32 teachers and head-teachers being interviewed, 82 percent believed that it is better to prepare MDM in the school itself. The three predominant reasons for preferring MDM preparation in schools were: better quality control, fresher meals, and better hygiene. On the contrary, all six respondents who disagreed were from schools where MDM was prepared by non-state actors. They believed that it was burdensome to handle the logistics and it takes time out of teaching-learning activities.

6.3.4. Discussion

The MDM program, as mentioned above, is probably Gol's most successful program. It is classified as a Centrally Sponsored Scheme implying that the centre has a role to play both in its financial viability as well as in establishing the broad norms for its functioning. Currently, the norms are derived from the NFSA, 2013 and the guidelines following from it, which allow for non-state participation in its provisioning, the extent of which varies from state to state.

For several reasons, the provisioning of MDMs stands apart from the others, within the education sector, and they are worth discussing. For one, it is only for this service that the guidelines specifically mention the no-profit motive for the provisioning of the service. Two, the guidelines at all three levels - entry, operation, transparency, and accountability - are the most explicitly and carefully laid out. Three, a system of ongoing evaluation is also included.

However, the ground reality shows a mixed picture. We interviewed three MDM providers – one national representative from Akshaya Patra Foundation one of the largest NGO suppliers of MDMs across the country, and two providers from Rajasthan and Punjab - one from Akshaya Patra again, and the other from Rahul & Chandmasi Pvt Ltd (R&C) - an organization supplying MDMs in Punjab. From our interviews we learnt that there were significant differences in the approach of the two NGOs. While Akshaya Patra is a not-for-profit NGO, R&C is a private for-profit organisation. At first, this seems to be a violation, however, the government guidelines state that the organization should be committed to providing MDMs on a 'no-profit basis', implying that even if the organization is a for-profit organization, as long as the MDMs are providing on a 'no-profit'

motive, it is not a violation. However, this is clearly a slippery slope, and as yet hard to know any further details. Moreover, the CAG Performance Audit of MDM (CAG, 2015) finds certain deficiencies in the working of non-state providers. For instance, scrutinizing the records of ISKCON's MDM delivery in Karnataka, the CAG Report notes that its grain usage fell short of prescribed norms by over 10 lakhs kgs. The CAG Report also highlights two cases of NGOs, including ISKON, collecting significant donations to deliver MDMs (CAG, 2015). The report deemed it as "inappropriate" since the compensation for delivering the services is to be provided by the central and state governments. Another worrying example of corruption came from Uttar Pradesh's Saharanpur district, where an NGO continued charging for providing meals via the automated system, despite the school being shut down several years earlier (CAG, 2015). What these worrying examples make evident is perhaps the importance and lack of regular field inspections and visits.

At the state level, the Rajasthan Akshaya Patra Foundation, said that they prepare the meal according to the menu fixed by the government, for approximately 230 to 240 days per year. The respondent reported that the kitchen where the food was prepared was monitored daily. And a toll-free number for parents, teachers, and students served to report grievances, and several complaints had been received through this system in the past. This was different however to what we heard from the representative at the national level who said monitoring at the school level was limited given the vast number of schools they supplied to and limited state capacity. Instead, the focus of inspections and compliance was on food regulations and safety through both internal and external monitoring. On the other hand, the respondent from Punjab reported that they set the menu for the MDM and they provide meals for less than 200 days. They reported that the kitchen where the food was prepared was inspected once in six months. The respondent did not know if there was a grievance redressal mechanism in place for parents, students, and teachers. While, Akshay Patra appears to be functioning within the framework of norms, R&C is not only a for-profit outfit but it also does not appear to be following the norms.

On the well thought-out and articulated norms for MDMs, it is worth keeping in mind that they emerge from the NFSA which itself grew out of a larger and concerted civil society movement.³³ This movement led to a PIL in the SC and the establishment of a continuing mandamus by the court implying a judicial oversight of the programme, even before the NFSA was passed. Under the aegis of this oversight mechanism and the efforts of the right to food movement, several grass-roots groups became actively involved in ensuring the functioning

³³ For more details, see: righttofoodindia.org

of the MDM programme in line with its goals and objectives. In other words, over and above the involvement of the state institutions, local involvement with the provisioning of MDMs has been fairly high - and higher than it has been for other aspects of education provisioning. As a result, there emerged a deeper understanding of the pitfalls that could occur with lack of monitoring, especially of the for-profit private providers. This is an important point as it points to the 'virtual circle' that is possible between State efforts and community action in the implementation of social sector programmes. While sufficient state capacities are no doubt a necessary condition, the concomitant of community involvement can in many instances provide an important element of the sufficient conditions for success. The latter can and do act as the monitors of the monitors, providing another link in the feedback loop. It is therefore possible that the difference we found between Rajasthan and Punjab reflects lower civil society action in Punjab, compared to Rajasthan. Other explanations could relate to the fact that Punjab being a much richer state with higher levels of food sufficiency (and presumably less hunger), the MDM is not as important a programme there, and hence not the same level of care is given to following all the guidelines.

On the well thought-out and articulated norms for MDMs, it is worth keeping in mind that they emerge from the NFSA which itself grew out of a larger and concerted civil society movement

Box 3: Excerpt of an interview with a national level officer from the Akshaya Patra Foundation

Established in 2000, the Akshaya Patra Foundation operates a school lunch programme through a Public-Private Partnership modality which provides children in government and government-aided schools with nutritious meals. The organization operates through two main types of kitchens- i) centralized, automated kitchens, which are able to produce over 100,000 meals at a given time to supply schools in the vicinity of the kitchens and; ii) decentralized kitchens managed by women from Self-Help Groups, The centralized kitchens are equipped with state-of-the-art equipment which is sanitized before operation. Menus are scheduled and customized according to regional tastes and accessibility of ingredients. While the kitchens source locally, they cannot be completely dependent on local farmers due to fluctuations in the quantity of harvest produced. The government provides food grains at a subsidized rate.

The automated centralized kitchens make anywhere from 5000 -1.2 lakh meals a day. Currently, the organization operates 58 kitchens across India. Per meal costs vary from state to state, but are lower at centralized kitchens than that of decentralized kitchens. The establishment of new kitchens starts with an invitation from the government or an introduction by a donor/funding organisation leading to state approval. Private donors provide up to 60% of funding for operation of kitchens. Kitchens begin construction after a Memorandum of Understanding is signed with the government. It takes about 6-9 months to construct a new kitchen.

The food is prepared according to Food Safety and Standards Authority of India (FSSAI) and MDM norms. According to the official, there is no central government authority to supervise the meals prepared by Akshaya Patra Foundation. However, there are robust internal and external monitoring and inspection mechanisms in place. Multiple inspections are carried out annually, biannually, or quarterly. Food samples are sent to an external National Accreditation Board for Testing and Calibration Laboratories (NABL) accredited lab for analysis every quarter. Other than food, RO plants, biogas plants and other norms specified in regulations are also examined. Food Safety Officers, FSSAI Officers, Food Safety Managers etc. carry out onsite inspections periodically. Akshaya Patra carries out both internal as well as external audits through third parties. There is however no monitoring at the school level. The senior member believed that this is because individual inspection of schools can be cumbersome due to their vast numbers. With respect to the process of exit – no clear defined process was mentioned. Instead, delays in reimbursement from the government is one of the primary problems faced by Akshaya Patra kitchens, the official stated. Incessant delays can ultimately lead to closure of kitchens.

6.4. Additional Teacher Providers

Non-state actors also seek to support the government and improve the quality of education by providing additional staff to government schools and low-fee private schools. Often various NGOs work with state governments across India in a PPP model. While there are RTE guidelines that teachers are required to meet, such as minimum qualifications, teachers provided by non-state actors like Teach for India (TFI)³⁴ remain outside the purview of such guidelines (Subramanian, 2018). In case of TFI, teaching fellows receive mentorship and training from TFI for five weeks before being placed in government and low-fee private schools. Moreover, these fellows are exempted from any administrative work that government school teachers are required to perform. Fellows are allowed greater autonomy in their approach and are free to use different pedagogical methods. There is little monitoring of fellow teachers. While they are answerable to the principle of the school for attendance of students and classroom discipline, they are not regulated by the administrative structure of government bodies (Subramanian, 2018). A set of insights from a detailed interview conducted with a senior official from TFI is presented in **Box 4**.

“While there are RTE guidelines that teachers are required to meet, such as minimum qualifications, teachers provided by non-state actors like Teach for India (TFI) remain outside the purview of such guidelines.”

---- (Subramanian, 2018)

Academic support through provisioning of teachers to government schools by private organisations was not found to be common, even though the practice does exist in India in certain parts. Of the teachers interviewed as part of this study, only those from Tamil Nadu reported non-state teachers coming to their schools for additional support. In the five schools spread across two districts in Tamil Nadu, the additional teachers were provided by a CSO called Pratham Education Foundation, which has a pan-India presence. The government school teachers felt that these non-state teachers had a positive impact by providing additional teaching support and supplementary materials. Similarly, a head teacher from Himachal Pradesh reported that non-state teachers had visited their school. However, the head-teacher felt that the teachers provided were not equipped to understand the context of the students. Moreover, they did not have degrees such as B. Ed and hence were not considered qualified.

³⁴ Teach for India (TFI), an off-shoot of Teach for America (TFA), is one of the biggest NGOs involved in providing teachers to government schools.

We also interviewed private additional teacher providers, namely the Sampark Foundation in Himachal Pradesh, Bodh Shiksha Samiti from Rajasthan, and Smart Education from Uttar Pradesh. The institutes from Himachal Pradesh and Rajasthan are NGOs whereas the organisation from Uttar Pradesh is a private philanthropic organization. The organisations from Rajasthan and Uttar Pradesh cater to both public and private schools whereas the organisation from Himachal Pradesh provides additional teachers only to public schools. All three organisations provide their teachers with training. Sampark Foundation in Himachal Pradesh has different training programs ranging from 3 to 6 months going up to a year. Bodh Shiksha in Rajasthan trains their teachers from 3 months to 6 months. The organisation in Uttar Pradesh provided the minimum training of fewer than 3 months. The organisation in Rajasthan was the only one that did not have a grievance redressal mechanism, though neither of the other two reported receiving any complaints.

We asked the interviewees about what, in their opinion, was the value-add that their additional teachers bring in. The respondents from Himachal Pradesh and Rajasthan said that they felt that government schools needed additional teachers to improve learning outcomes. Moreover, they felt that government schools lacked innovation and creativity in their pedagogy. According to the respondents, additional teachers were able to bring in new digital education and new pedagogical practices to improve educational outcomes. The respondent from Uttar Pradesh, however, had a surprisingly different take. He felt that government schools did not need additional teachers because there were not enough students in the first place. Moreover, he said that government teachers were better equipped and more hardworking than the teachers from private organisations.

Overall, it appears that this particular aspect of non-state provisioning is clearly the least developed, and raises a different set of questions, primarily why are additional teachers required in the first place? Is this an expressed need by the State? Is it a tacit acknowledgment of the low state capacity-- reflected in a large number of vacancies and quality of teacher training? Is that also why there are no overt norms or guidelines for this category of provisioning?

Box 4: Additional Teacher Provider: A Case Study with Teach for India (TFI)

We spoke to an official from TFI office in Pune district of Maharashtra state about the organisation's relation with the government, its functioning, and related constraints. TFI's main program is their fellowship program-- It places additional teachers, known as teaching fellows, in government and low-cost private schools for a period of two years. In government schools, these fellows are placed in Grades up till 7, but in private schools it can go up till Grade 10. TFI ensures that a cohort they start with is seen through till they graduate. However since each fellow does not spend more than 2 years, incoming fellows go in sustaining those that are moving out – "Relay model". In Pune, across schools and including government schools, there were 100s of vacancies across English medium schools. Moreover, the hiring of government school teachers as permanent cadre in Maharashtra has been put on hold since 2011. Instead, teachers were being hired on 11 month, which is subject to renewals. Through this programme, TFI tries to fill the human resource gap in the system.

The fellows are, generally, trained through a 2 month residential program. Since the pandemic, this program has shifted online. They are trained in how to make a lesson plan, behaviour management, and leadership development. On being assigned a classroom, the fellows are assigned a program manager who monitors the work of 15-18 fellows. Twice a month, the manager visits classrooms of the fellow and gives feedback. The fellows are divided into two buckets: Mathematics and Science and English and Social Studies. Every month, a learning circle within their buckets is also organised. Apart from pedagogical training, fellows are also instructed on how to manage school relations. Over the last 3-4 years, TFI has also started in-service training of government teachers. While initially the government officials were a little reluctant, with the onset of the pandemic the PMC reached out to TFI to train government teachers about virtual platforms.

The hiring of government school teachers as permanent cadre as a state law has been put on hold since 2011. They are instead hiring only contract teachers for periods of 11 month which can get renewed or not. Till very recently teachers were paid 5,000 per month, which has now increased to Rs. 9,000-10,000. Legally, TFI fellows cannot be categorised as teachers. They are instead labelled as teaching resources. Consequently, many schools prefer contract teachers over TFI fellows since contract teachers are equipped to carry out certain administrative tasks such as election duties. The crucial point here being that while TFI fellows are able to plug in an important gap it is neither a perfect replacement nor a long-term solution.

According to the official, the regulatory framework is currently incipient. There is no mechanism or oversight in private schools and limited oversight in government schools. The process of working with schools differs from state to state. TFI signed a 10 year Memorandum of Understanding (MoU) with the Pune Municipal Corporation in 2015 highlighting certain broad expectations. Based on the number of fellows on-boarded, they decide on a year-by-year basis, how many schools they will work with. Generally, TFI works with at least 1-2 schools per year in Pune.

Many schools, through head teachers, reach out to TFI. TFI has an internal criteria for selecting schools they work with. The factors they consider include child and fellow safety, geography, proximity to urban centres, and a maximum teacher-student ration of 1:40. Once a school has been selected, a copy of the MoU is shared with the school and the fellows are placed. There is an evaluation of performance after each cycle'. The process of ending the relationship with a school is on a case by case basis. The official explained that they felt their commitment is to students and parents, and not schools themselves. The official explained that there are several constraints the organisation and the fellows have to negotiate with. There is often a difference in the demography of fellows and the context and people they work in. This leads to an overarching tension. They try to match fellows demographically-- if a school is in a Muslim majority neighbourhood, they try to place a Muslim Fellow there but it is not a set criteria. Sometimes, due to high teacher vacancies in a school, the additional burden falls on the fellows. There is a salary gap between what the fellow and the school staff. In the case of low-fee private schools, even the head teacher's compensation is often less than the fellow's salary.

Lack of State Capacity in Regulation of Supplementary Service Providers

Inadequacy of resources for monitoring of supplementary services was flagged by a relatively higher number of frontline officials, than for the monitoring of private schools. Of the 23 BEOs and DEOs interviewed, 15 officials believed that they did not have adequate human resources, and 12 officials reported that physical resources were not available to carry out the monitoring functions of the private supplementary service providers. However, most frontline officials believed that they either did not have adequate financial resources for monitoring private providers or were not aware about availability of such resources (17 out of 23).

The officials were specifically asked whether supplementary services were being regularly monitored in their blocks or districts. Of the 23 BEOs and DEOs interviewed, 13 reported that either they did not know about monitoring or it was not taking place at all. Interestingly, all the respondents from Himachal Pradesh, except one DEO, answered in the negative. Again, eight respondents (3 from Himachal and 5 from Rajasthan) said that they did not think that monitoring of supplementary services fell within the roles and responsibility of block or district officials. However, when asked whether they think it is important to monitor supplementary services, all the respondents said that a feedback mechanism was crucial for better functioning of these services. Also, most of the BEOs felt that the lack of resources and heavy workload related to administration and monitoring of government schools, are some of the key factors for their inability to monitor them. They felt that while regulation of non-state providers is important to maintain quality of services, the education department should assign a different team to ensure this. Two district officials also felt that proper monitoring guidelines in this respect should be sent to them on a regular basis, which is not the case at present. These views were further corroborated, in our interview with a TFI personnel, who confirmed that one of the main reasons the government reaches out to them for teaching support is the huge gap in teacher appointments in their schools. For instance, in the 51 English-medium schools of Pune alone there were 256 teacher vacancies 2 years ago when they started working there. And while this gap is sought to be filled through the “teaching resources” provided by TFI, regulating or monitoring the performance of the TFI fellows is left entirely to TFI alone.

Officials believe that regulation of non-state providers is important to maintain quality of services but the education department needed to assign a separate team for the job, as it was beyond the purview of their roles and responsibilities to monitor non-state provision of supplementary services.

7. Conclusion and Recommendations

The paper presents the landscape of non-state provisioning and the current practises and challenges with respect to regulation of the non-state in education. The following areas are highlighted:

a. Rapid growth of non-state and the need for a flexible regulatory mechanism

As shown in the report, the scale and scope of non-state provisioning has seen an unprecedented increase in the last few years. While India has always had space for private provisioning, largely in the form of philanthropic initiatives, recent trends have shown a shift away from philanthropy to newer forms of private management as well as greater engagement in supplementary services and policy design. While multiple factors may be adduced to explain these shifts, there are concerns regarding the both the quality of what is being offered by the non-state providers, as evidence is mixed on this account, but particularly with respect to the impact on equity. As India possesses a fragmented and rudimentary system for the regulation of education, what passes for non-state appears to be going largely unchecked. While, the lack of a robust regulatory framework impacts State schools as well, the impact on non-state schools and non-state provision of supplementary services is deemed more worrisome. The reason being that there is the possibility of seeking recourse and accountability within the State structure, however poorly functioning, but none exists for the non-state. An example of this is found in the many instances of arbitrary fee hikes by private schools that have led parents to appeal to the courts to intervene.

Currently, what passes for regulation is a rudimentary set of rules, without an overarching structure, or framework for defining what regulation means, why it is important or how it needs to be done. As a result, regulation norms tend to be formulated on a differential basis at the state level and carried out by existing implementing agencies, such as the state or sub-state education departments, on the basis of very generalized guidelines that cover a limited set of issues, primarily related to entry or recognition. Further, with several new actors also coming into the field from corporates, philanthropy in addition to the traditional NGOs, a one-size fits all model regulatory framework is unlikely to work. There is thus a need to ensure a flexible regulatory framework that is able to adapt to the changing context of non-state provisioning. This is in line with the NEP recommendations which calls for a “a light but tight” regulatory framework to ensure integrity, transparency and resource efficiency of the educational system as a whole including both State and non-state.

b. Improving State capacity

With no additional resources provided for the job - financial or in terms of human capital - the offices in charge of regulation are unable to give it the priority it deserves. In fact, as mentioned by the frontline officials interviewed for the study, they do not consider it part of their responsibilities to regulate or monitor non-state education. But, whose job it is to do so, is not specified. While that is a finding in itself, it has also limited our ability to undertake in-depth analysis of the same. It goes without saying therefore that improving human, physical and financial resources in order to develop an appropriate and adequate system for regulation is the need of the hour. It would require not just a separation of the regulatory from the implementation structures as suggested in the NEP, but a clear enunciation of the functions and goals of the regulatory system and the agents within it. In addition, adequate training of the officials in charge to ensure appropriate responses would improve the functioning within the system. In similar fashion, improving the capacities at NCPCR and SCPCRs and providing an independent source of financing for them could also boost the monitoring capacity within the system.

c. Resolving conflict of interest

Quite apart from the resource crunch and structural inadequacy is the question of conflict of interest that is implicit in the arrangement whereby the implementing agency, i.e, the state department is also the regulatory or monitoring agency. While this certainly implies a lack of independence for the regulation of state schools, it is less of a problem for non-state provisioning. But, the State structures are not adequately oriented towards regulating and monitoring non-state provision. The NCPCR (and SCPCRs), which have been given the responsibility for the elementary grades, in the RTE Act can play the role of a neutral agency as they are answerable only to the Parliament. However, the budgets for conducting their role as the monitoring agency are received from the Ministry of Education, thereby diluting their independence. The fact that the actual allocations, as mentioned earlier, are far below what can be considered reasonable, adds to the difficulties of NCPCR (and SCPCRs) in carrying out their role as a monitoring agency. The NEP 2020 has proposed the establishment of an independent agency.

One way of doing this is as recommended by the NEP which calls for an independent regulatory authority to be set up in every state known as the State School Standards Authority (SSSA). As per the policy, this body will be responsible for regulation of all schools (except central schools) and calls for them being “assessed and accredited on the same criteria, benchmarks, and processes.” The independent nature of the SSSA would ensure separation of powers and thus increased accountability. At the same time, by having authorities at the

state level, it could cater to the specific context and diverse nature of the non-state. However, the details of it have yet to be worked out.

d. Importance of Transparency

Access to regular, reliable and actionable information is a cornerstone of effective public service delivery. This need for transparency rests at two levels: first, within the system in relation to the rules and regulations that govern the non-state; second to the citizens who are the ultimate consumers of these services. While the NEP argues for the need to publicly disclose all regulatory information which can be used for public oversight and accountability, the report found a near absence of a transparent reporting system at both levels. With respect to information governing the non-state, there is an urgent need to ensure access to information on fee regulations, reporting and accountability structures, and monitoring mechanisms. In this context, implementation might be easier if every state puts together all the regulatory compliance requirements for private schools in one place in a simplistic manner, so that there is greater clarity and compliance becomes easier. Such a collated set of guidelines in one place, along with training and awareness generation activities for private school provides could be extremely beneficial for better compliance.

While, there is general lack of transparency in the system, especially as related to compliance of standards and norms, the system is especially opaque in relation to PPPs. As there is no definition as such, for what constitutes a PPP, they do not find space even in the mechanisms that exist for entry of non-state provisioning and the operational guidelines for their functioning. They are a separate category within the non-state and appear to follow a case-by-case system, determined arbitrarily by the body entering into an agreement (or MOU) with the private partner. This was revealed to us in the interview with Teach for India, which appears to be following one type of PPP model (**Box 4**). How many others exist, and whether they conform to the goals of education or even Constitutional frameworks and values, is unknown.

On the citizen side, public disclosure of private costs and school fees, grievance redressal mechanisms, and the structure and workings of the governance committees could go a long way in building citizen trust in the non-state.

e. Increasing Accountability

In order to improve accountability in the system the need of the hour is to take a broader and at the same time more detailed view of the system, its structure and functionalities, its objectives and its delivery systems. Developing an accountability matrix, where each goal and its delivery is mapped out to specific agents within the system who can be held accountable would be a good start to putting in place a robust accountability system within the system. This could be further enhanced by adding public accountability into the frame. Hence, if the accountability matrix could also specify who in the system is answerable to them for lacks in the system, it would add the element of public accountability within the matrix. For instance, if an incentive is not delivered or if some form of discrimination or other grievance is not addressed at the school level, who within the system can be held accountable in a way that a solution is found. At present, parents go from pillar to post and eventually to the courts to get some relief. The situation is similar for teachers. In fact one of the added responsibilities for frontline (mainly district education officers) in recent years has been attending to court cases filed by teachers.

This applies even more so for non-state schools, where apart from appeals to the management there is little recourse. Hence, placing within the State structures a system for parents of non-state schools or suppliers of supplementary services that can respond to appeals would be an added element of the accountability frame. This is especially important as SMCs are not mandated for non-state schools, under the RTE Act. Parent teacher associations do exist and appear to meet fairly regularly, but have no traction beyond the management of the school, unlike SMCs that do. Hence, there has been an increase in appeals to the courts by private school parents recently.

i) Role of punitive accountabilities

The narrative of accountability of public services that has grown in the last few decades revolves around two axes. One, relates to accountability within the system and the other to social accountability or accountability to the public that the service is meant for. Accountability within the system has come to be focussed on learning levels as the primary concern and further on teachers as the agents responsible for it. Hence, the accountability measures suggested have taken the shape of punitive action, such as performance pays for teachers for achievement of learning outcomes and cc-TV cameras in classrooms to observe teaching practices. While teachers certainly have a role to play, reducing the framing of accountability within the system primarily on the teachers, has several problems associated with it. One, the teacher is the lowest rung in the system and highly dependent on the functioning of all levels above her. While not denying the important role played by the teacher in the learning process, the lack of resources (insufficient teachers and multi-grade teaching), systemic failures (books arriving late), poor infrastructure, poor or lack of training, are factors that

constrain the teacher's ability to teach at par. Without a concomitant accountability at all levels, the effectiveness of the teacher is thus compromised. Unfortunately, what is missing in the system is an overarching accountability matrix that describes accountability for all areas of education delivery across the levels of delivery and related to the provision of specific aspects. For instance, who in the system is responsible for filling posts or ensuring that textbooks reach on time, and can thus be held accountable. In other words where does the buck stop for any or all of these provisions? This applies also to regulation and especially regulation of learning levels. It is not surprising then that the regulatory framework, as it exists, does not include learning as an area that needs regulating. De facto, then the 'burden' as it were is placed on the teacher, who has the least agency within the system. In fact, the punitive measures that are sought to be placed on her can have counterproductive results, such as: a) teaching to the test and b) focusing only on those children who are most likely to perform well, to the detriment of a large section of the class, particularly those from marginalized backgrounds, who learn at different levels.

Finally, social audits that have emerged in recent years as an important forum for increasing public accountability could be extended to private schools as well.

ii) Accountability for larger goals of education

The import of the foregoing discussion is that a) even as learning levels have acquired pride of place as the goal of education, the current accountability narrative works in contradiction to it, and b) the regulatory framework, as it exists, is unsuited to account for it either. This applies to both State and non-state schools. However, to the extent that non-state schools, as we have seen, are further from regulation as far as their daily operations are concerned, their accountability to maintaining teaching learning standards is less regulated and less known. The Annual Status of Education Report³⁵ (ASER) that has been tracking learning in State and non-state schools also point to the ambiguities in the difference between the two types of schools as far as learning is concerned.

The one area that does seem to find greater traction within the system is financial accountability, which too is framed in a somewhat narrow sense to imply financial audits. The frequency and strength of these however vary from state to state as they are usually governed by States own Acts and bodies. The primary body at the national level namely the Comptroller Auditor General of India has a large ambit but does not conduct regular audits of a particular sector. For instance, the latest compliance or financial audit for education was in 2017.

³⁵ ASER Reports available online at: <https://www.asercentre.org/>

Other forms of financial accountability, such as regulation of fees or even payment of teacher salaries in accordance with norms also remain areas of neglect.

Last, but not least, aligning the regulatory framework with the broader public goals of education would also go a long way in improving the regulatory system. As seen above, the system is focussed narrowly on administrative requirements and financial norms. As education is a complex subject with larger social ramifications, the regulatory frame needs to account for these complexities as well. In particular equity and diversity as it relates not just to the student body but also to teachers are goals that need to be regulated and monitored. Even the objective of learning outcomes, which have acquired a lot of space in the public discourse appear not to be reflected in the regulatory frame. In addition to developing this aspect, adding non-cognitive learning outcomes would add value to the frame.

In conclusion then, it would be fair to say that as the involvement of the non-state sector in education grows the need for a robust regulatory framework has also grown. Unfortunately as things stand today such a framework is missing in India. What exists is a limited set of rules and norms, randomly, and in some cases arbitrarily applied. Part of the reason for this is a lack of state capacity, which unable to meet the increasing demand for education has turned to the non-state to fill gaps, but is now constrained in similar fashion to regulate and monitor non-state provisioning. The implications of unfettered supply of non-state education are not encouraging. Hence, building state capacity for the job is clearly a need of the hour.

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