



GLOBAL EDUCATION MONITORING REPORT

2022

Ease of operations for budget private schools in India

SUBMITTED BY CENTRE FOR CIVIL SOCIETY



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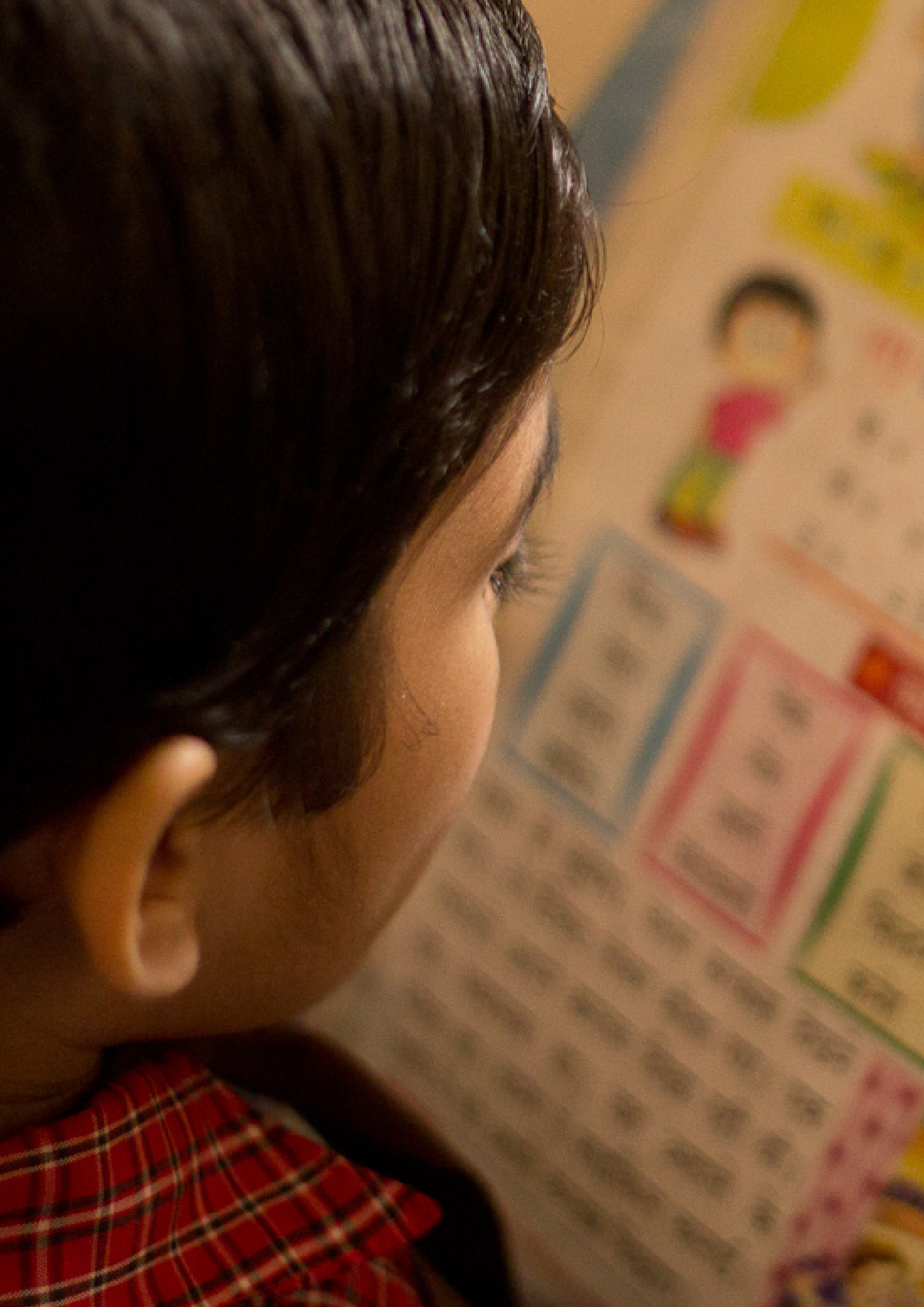
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Introduction

Nearly 50% of all students are enrolled in schools run by non-state actors in India. From 2010 to 2014, enrollment in private schools rose by 16 million (Kingdon 2020). Of these private schools, 25% charged a monthly fee of less than \$2.65 (INR 200) and 50% charged less than \$6.63 (INR 500). These schools, known as budget private schools, low-cost private schools or affordable private schools, account for 70%–85% of student enrollment in India's most populated states (Kingdon 2020; CSF 2020). There are different definitions of what constitutes these low-fee schools run by non-state actors because of the wide variety in the private schooling sector. Definitions include schools that are financed entirely by tuition fees and do not charge monthly fees beyond the daily labourer wage or those that are not solely dependent on government financing (Alam and Tiwari 2021).

The National Independent Schools Alliance (NISA), one of the largest non-state schools in India, refers to itself as an association of budget private schools. As per NISA, these schools charge fees less than the per-child expenditure incurred by government schools. For the purpose of this report, we referred to these schools as budget private schools.

Budget private schools cater to the active class of parents within disadvantaged communities who cannot afford the fees of higher-end private schools but are not satisfied with the education provided at government schools and seek affordable alternatives. They charge a monthly fee between \$5 (INR 400) and \$50 (INR 3,500) depending on the services or infrastructure provided.

Despite their significant presence in the Indian education landscape, there is no comprehensive review of the contribution of budget private schools to furthering access and equity in K-12 education or the regulatory challenges they face.

School education in India is a concurrent subject (Entry 25), that is it may be regulated by both Union and state governments.¹ At the central level, school education is governed under the Right of Children to Free and Compulsory Education Act, 2009. At the state level, 145 state State Acts and 101 corresponding rules exist for K-12 education across India (Sudhakar 2020). Limited research is available on this regulatory interface for private schools, especially their experience with compliance and what they consider challenging.

In this report, we attempted to explore this interface with a focus on licensure, hiring of teachers, inspections, admissions and grievance redressal. We examined legislation, supplemented our analysis from interviews and surveys with school owners, and filled the gap in the literature on this sector with a pan-India study. We did so for budget private schools in Jammu and Kashmir, Assam, Andhra Pradesh, Telangana and Haryana and account for differences across these states. Finally, we also documented the impact of COVID-19 on budget private schools. Most studies and data on school education in India focus on government schools (Accountability Initiative; U-DISE+; Annual School Education Report). The earliest studies came from Tooley, Srivastava and Harma, and studies continue to focus on different topics. Although significant work has been done on de facto operations of functionaries (Aiyar and Bhattacharjee 2016; Posani and Aiyar 2009; Pritchett 2018), limited research is present on the larger de jure regulatory framework for K-12 education in India (Ambast, Gaur, and Sangai 2017).

¹ The Constitution of India was amended in 1976 to reflect this change through the 42nd amendment. Prior to this, education was regulated only by state governments.

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CHAPTER

1

Comprehensive
Literature Review on
Budget Private School
Regulations

The World Bank (2014) argues that increasing spending expenditure will not solve the problem of poor learning outcomes, lack of access and quality. It proposes that the effective utilization of resources depends on properly aligning incentives and installing accountability mechanisms for all schools, including private schools. Its Systems Approach for Better Education Results - Engaging the Private Sector (SABER-EPS) focuses on four policy goals that assess the effectiveness of policies for private schools: encouraging innovation by providers, holding schools accountable, empowering all parents, students and communities and promoting diversity of supply.

According to the World Bank, the first three of these policy goals, that is encouraging innovation, holding schools accountable and empowering all parents, students, and communities, are appropriate goals for any education system, whether the government is the primary service provider. The extent to which each is currently implemented varies widely, along with the quality of service delivery across nations. The fourth policy goal of promoting diversity of supply emphasizes strengthening client power by increasing the choice options that parents and students have among educational providers. It believes that an education system is composed of all the learning opportunities that are available in a society — not only those provided by government schools, but also those offered by a diverse range of providers (government, communities, faith-based organizations, for-profit organizations, private institutions and non-governmental organizations) and funders (public and non-public).

Ambast, Gaur and Sangai (2017) modified the SABER-EPS to analyse regulations governing private schools in India. They identified four policy goals: ease of opening a school, operational autonomy, accountability and transparency and empowering parents and community. Their analysis showed that private schools were regulated by a mix of Right to Education (RTE) Rules, State Acts, executive orders, notifications and circulars, and these different instruments were often in dissonance with each other. In Haryana, two separate provisions (Section 12(1)(c) of the RTE Act and Rule 134-A of the Haryana School Education Rules, 2003) require private schools to reserve seats for children from economically weaker sections. Both provisions specify a different proportion of seats to be reserved. This multiplicity of instruments and the varying times at which they have been enacted signal the lack of

a coherent policy objective driving the regulation of private schools. However, the application of their framework does not accurately reflect the extent of the problem: for instance, under Andhra Pradesh, when asked if there is 'no restriction on who can open a school', the authors have marked 'Yes'. But they have also added a comment detailing that only entities registered as Societies or Trusts may be allowed to open a school. This condition on eligible educational entities does impose a restriction on who can open a school and, therefore, seems to be incompletely captured in the analysis.

Sharma and Chandra (2017) argued that the government adopted a 'supportive approach' to build the capacity of government schools but adopts the opposite for private schools by using a heavy hand of regulation. The focus on inputs such as infrastructure and minimum qualifications makes it difficult for well-intentioned players to enter the sector. This is critical to address, especially since such norms have had a limited impact on learning outcomes and do not focus on the overall quality of education. For instance, while the RTE Act had a positive effect on infrastructure and teacher absenteeism in government schools, it had a corresponding negative impact on literacy and numeracy skills for public school students. This is critical to address, especially since such norms do not focus on the overall quality of education and variables including quality of teachers, curricula and pedagogy (Bhat 2017; KPMG 2016).

Nambissan (2014) criticized the attention being given to budget private schools and their regulatory challenges in India. In her study, she focused on the relationship between poverty and elementary education and how budget private schools were being advocated as a way out of poverty. One of her key criticisms was against the 'neo-liberal globalization and coming together of powerful networks around the education business that seek to expand schools markets and shape educational policy in developing countries'. She disagreed with the increasing role played by private schools in catering to education for low-income groups and, instead, asked to revisit 'the purpose of education' informed by 'social justice'. She argued that private schools were able to deliver low-cost education by lowering teacher salaries and hiring unqualified teachers, and painted private schools in a negative light. But it is not clear why this is a bad feature since private school teachers are held accountable by both the school management and parents. This

is not seen in government schools where at least 18.9% of teachers are not present on any given day (Azim Premji Foundation 2017). Similarly, for instance, one of Nambissan's counterarguments to

private schools meeting the aspirations of low-income parents for English-medium education at low cost is

'However, it has been acknowledged that 'in some low cost schools, teachers are so under qualified, that they cannot speak in English let alone teach in English, one of the biggest attractions for parents in the lower income segment' (Garg, 2011:31).'

On closer examination, this citation is of an anecdote from a school owner to whom the drawback does not apply. Relying on this as evidence seems flawed as it is akin to a competitor suggesting that his fellow market players do not perform as well as he does. In another derogatory statement, the author argues that budget private schools treat RTE Act, 2009, as the main hurdle in their operations because the Act lays down the essential norms for 'education of quality' and 'a good teacher' and declares profit-making from schooling as illegal. But this line of argument ignores the adverse impact of school

closure as a penalty for non-compliance for private schools (CCS 2018). In addition, her assertion that the RTE Act, 2009, makes profit-making illegal is incorrect. This restriction enters the sector due to Supreme Court judgements and state RTE Rules that we will lay down in the following sections.

A recent Oxfam study (2020) on the regulations of private schools in India bases its analysis on fee regulation particularly, on the premise that the role of the State is to protect the RTE right to education from commercialization.

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

From a principle-based approach, it is not clear why the owner of an enterprise should not be allowed to partake in the profit earned. Such a statement would not be made for any other enterprise but is made so repeatedly for K-12 education without an explanation (see Narang 2019).

In addition, the State Departments of Education play a critical role in the governance of private schools. They write and apply rules, recognize schools, conduct inspections, impose penalties and resolve disputes. Despite this, research is sparse on how they carry out these functions and their impact on the growth and quality of private schools (CCS 2019). There is little focus on what incentives drive schools or the root cause for poor performance (Anand and Sudhakar 2020). Apart from the lack

of accountability for functionaries, one officer often holds multiple functions, including regulation and service delivery (World Bank 2004; Posani and Aiyar 2009; Aiyar et al. 2010; CCS 2019; Anand and Sudhakar 2020). Such a system leads to the concentration of powers in the hands of certain individuals and dilutes focus while implementing goals (Shah and Patnaik 2014; Kasturirangan Committee 2019).

So far, all such existing studies on budget private schools deal with small sample sizes or specific features of schooling, such as cost of education and learning outcomes. Research is not up to date with the recent changes in the sector, particularly the impact of COVID-19 on budget private schools.

In addition, there is limited investigation of within-country variations in laws and policies (CCS 2019). There is not much exploration of the private provider perspectives, their experience with the monitoring and compliance frameworks, what they consider to be constraints and challenges and what they would recommend. There is a further research gap linking data on the policy environment with the experience of private sector providers that are expected to follow these rules and regulations.

Therefore, the research questions that the report will answer include:

1. What are the existing regulatory frameworks that govern private schools in India? How do they vary by state?
2. What are the characteristics of budget private schools, their monitoring and compliance-related experiences? How do they vary by state?
3. How do the regulatory frameworks and experiences contrast within each state? What would explain these differences?
4. In our study, we attempted to explore all these different aspects of the operations of a budget private school, such as regulatory requirements, quality of education, information for parents and fill the gap in the literature on this sector with a pan-India study.



Interrogative Nouns

The teacher says

all today

CHAPTER

2

Data and Methodology

We approached the project in three methodological ways: analysing the existing regulatory architecture for private schools in India; documenting the reality of how these regulations manifest and the characteristics of budget private schools across India; and comparing how all five states fare on these metrics.

CHARACTERISTICS OF BUDGET PRIVATE SCHOOLS

We reached out to a sample of school owners that were members of five state associations in India (Andhra Pradesh, Assam, Haryana, Jammu and Kashmir, and Telangana) with the aid of the NISA, a network of more than 60,000 budget private schools in India, and its state associations. Except Assam, these states have the most active associations in the NISA network and assured a good response to our survey. Earlier in 2020, NISA conducted a survey of schools in its network to document fee collection during the pandemic, and these states yielded the highest number of responses. Geographically, these states cover the north, northeast and south. The school owners in all three states, apart from Assam and Jammu and Kashmir, were spread across their respective states. We were only able to finalize our collaboration with the Kashmir association in the state.

We had initially attempted to survey schools in Nagaland but could not form a stable relationship with the state association. Instead, we reached out to schools in Assam. This sample was extremely small compared with the other states, and the state association we connected with was predominantly constituted of unrecognized private schools in and around Guwahati. We also faced a challenge with the linguistic differences in the southern states of Andhra Pradesh and Telangana where Telugu is the common language. To navigate all these issues, we hired research assistants with fluency in state

languages to help us communicate and conduct the surveys. We picked Jammu and Kashmir in addition to Haryana, even though both are in the north because the RTE Act, 2009, became applicable to Jammu and Kashmir only in 2019 due to its change in governance structure from a state to separate Union Territories. School education in Jammu and Kashmir has also suffered significantly due to terrorism over the past decades.

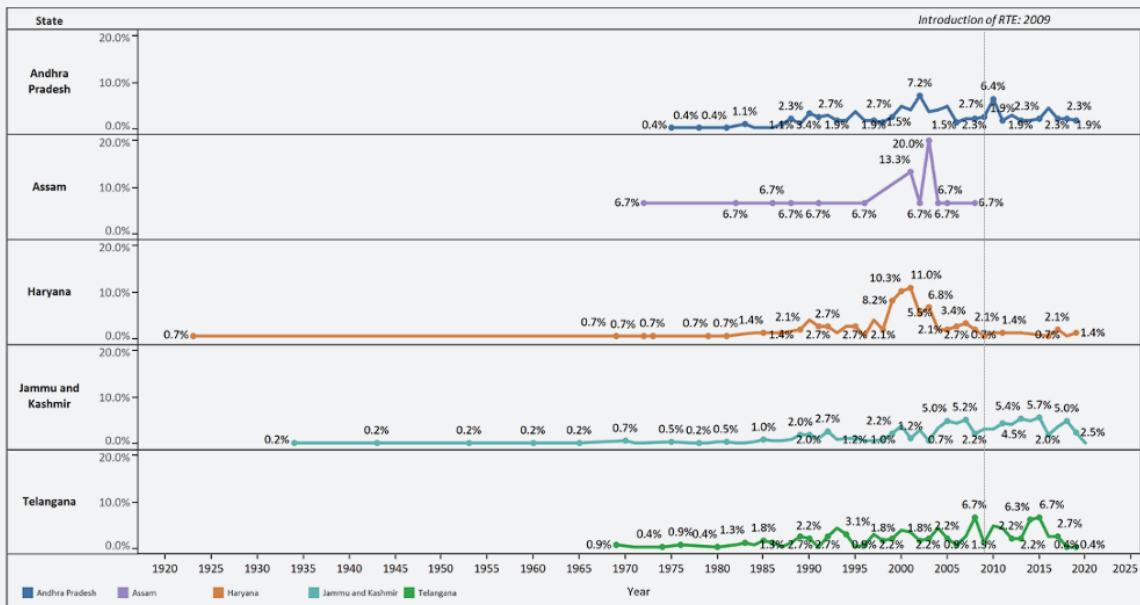
We conducted a survey of 1,052 recognized and unrecognized school owners and documented their profiles, their experiences with opening and running a school and COVID-19, covering

1. Enrollment rate, student profiles, fee structures, cost structures, teacher qualifications and infrastructure availability; and
2. Challenges faced by budget private schools, including compliance burdens and regulatory uncertainty, ease of opening and running schools, meeting educational quality standards and parental expectations.

Table 2.1:

State	Responses	Total number of member schools approached
Andhra Pradesh	264	629
Assam	15	37
Haryana	146	579
Jammu and Kashmir	404	896
Telangana	223	300

Figure 2.1:
School Establishment Year



Most of the surveyed budget private schools across states were established in the early 2000s.

Using a semi-structured questionnaire, we also interviewed the head of NISA, leaders of state associations of private schools and five school owners from each state to get an in-depth understanding of the sector and its ailments, especially during the COVID-19 pandemic. We covered why school owners were motivated to open their schools, how they financed their institution, gender norms in schools, quality of services offered, regulatory requirements and initiatives undertaken to check the impact of COVID-19.

We revised our questionnaires based on pilot interviews, stored our data anonymously and conducted interviews and surveys only after obtaining explicit consent from the respondent.

DE JURE ANALYSIS OF THE REGULATORY FRAMEWORK GOVERNING BUDGET PRIVATE SCHOOLS

We studied 56 state legislations in total across 12 states in India. These covered Jammu and Kashmir (2 laws), Andhra Pradesh (6 laws), Telangana (6 laws), Nagaland (1 law), Gujarat (7 laws), Kerala (1 law),

West Bengal (7 laws), Maharashtra (7 laws), Delhi (2 laws), Haryana (4 laws), Jharkhand (4 laws) and Uttar Pradesh (9 laws). We found that states broadly regulate private schools on entry, operations and exit (Sudhakar 2020). These may take the following shape:

Table 2.2:

Touchpoint	What does it include?
Licence to operate	Conditions of recognition; may include child safety, building norms, ownership structure and amenities
Staff employment	Minimum teacher qualifications and salaries; freedom to hire and fire teachers
Fees	Freedom to set and hike school fee
Inspection	Purpose, procedure and frequency of school inspections
Grievance redressal	Issues, parties, procedure, jurisdiction and finality (stage of no appeal for a dispute)

We attempted to understand the variation across private school—related regulations and understand why they may exist. We checked how the law treated government schools and private schools. This included pinpointing ambiguities in the law, potential conflict of interests and lack of accountability mechanisms. We referred to our earlier study on Maharashtra, Delhi, Haryana, Jharkhand and Uttar Pradesh legislation and replicated it for seven more states: Jammu and Kashmir, Andhra Pradesh, Telangana, Nagaland, Gujarat, Kerala and West Bengal.

Laws aim to incentivize socially productive activities by restraining specific freedoms or altering individuals' behaviours (Forji 2010; Prosser 2010). These restraints have to be guided by procedural and substantive safeguards. Procedural principles are concerned with the procedures that guide the making and application of laws. Substantive principles are linked to the content of the law itself (Waldron 2020). Using a Toolkit to evaluate laws on procedural and substantive principles (Narang and Bedi 2021), **we reviewed how state school education laws fared on three such administrative safeguards: due process and principles of natural justice, legislative guidance on discretion, and proportionality and nexus.** Of these, the first check is procedural in nature, while the last two are substantive (see Appendix 2).

We prepared a list of the common terms that indicated quality education from the Education for All Global Education Monitoring Report (2015). **We then checked the frequency of these terms through the state-level legislation, the RTE Act and the National Education Policy 2020.** We also identified phrases that indicated the delegation of discretionary powers to the executive from the RTE Act, 2009, the Delhi School Education Act and Rules 1973, the Delhi RTE Rules 2011 and the Haryana RTE Rules 2011. **We then checked for the frequency of these phrases across state-level legislations.**

Earlier in 2020, we had conducted a similar study of state laws for Maharashtra, Delhi, Haryana,

Jharkhand and Uttar Pradesh. We chose the remaining states to fully capture the diversity of experiences in India. Jammu and Kashmir and Nagaland have not been the subject of such an extensive deep-dive into K-12 education before. Jammu and Kashmir, in particular, is a border state that has historically seen politically and religiously motivated conflicts that have hindered education for children (Parvaiz 2017). Andhra Pradesh and Telangana are in the southern end of India where the language of instruction is often a source of friction between the Union and state governments; states prefer to teach either in English or in Telugu while the Union Government pushes for Hindi as well (The Hindu 2020 and Aman 2018). These states are also active participants of the NISA network. We chose Gujarat to particularly study its unique outcome-based approach to the RTE Act, which was not present in any of the other states. Kerala, another southern state of India, has one of the highest enrollment shares for private schools in India (~74%). West Bengal, on the contrary, has the lowest at 12.67% (Central Square Foundation 2020). We wished to study these in order to understand whether these enrollment shares were affected by respective state legislations.

There is a wide variety of legislation governing private schools in India. This is primarily because before 1976, education in India was solely regulated by state governments. States passed laws that reflected the need in their jurisdiction. For instance, Uttar Pradesh passed a law to take over the management of schools that were 'run directly or indirectly by unlawful organizations or by their members or sympathizers'. Such a targeted law is not present for any other state. Post-1976, both Union and state governments could regulate education in India. Some states repealed certain outdated acts, while other states only repealed selected provisions to accommodate newer legislation. This variation across states made it even more pertinent to study how K-12 education was regulated on paper and what happened in reality.



The background of the page is a photograph of a classroom. Several students in school uniforms are sitting on the floor, some with their school bags open. They appear to be in a lesson or activity. The room has a concrete floor and a window with a wooden frame. The lighting is bright, suggesting a well-lit environment.

CHAPTER

3

Characteristics of Budget Private Schools

So far, there is a lack of a pan-India or representative study of the characteristics of the budget private school sector. As mentioned earlier, a commonly agreed definition of what budget private schools are in India is lacking. In this section, we attempted to lay out the key characteristics of these private schools.

1. BUDGET PRIVATE SCHOOLS HAVE AN AVERAGE STUDENT ENROLLMENT OF 430

The average enrollment in a budget private school across 5 states before the pandemic was around 430 students. The enrollment numbers across grades are telling. All states have high enrollment numbers at Grade I compared with other grade levels. In Andhra Pradesh, there were 14,661 students admitted in Grade I before the pandemic. Similarly, in Jammu and Kashmir, 17,418 students were enrolled in Grade I. These numbers drop as the level of schooling goes up. Only 10,310 students were enrolled in Grade VI and 8,651 in Grade VIII

pre-COVID in Andhra Pradesh. The number of students in Grade XII was even lower, but that was partially due to budget private schools not offering senior secondary education.

As per U-DISE 2019-20 data, Haryana has the highest average enrollment in private recognized schools of the five states we surveyed. The average government school enrollment in Jammu and Kashmir is less than 50, implying that the government schools in the state tend to be 'small schools' as per the definition laid down by Datta and Kingdon (2021). The average private school enrollment is nearly three times higher than that in government schools across the surveyed states. Although this itself shows a striking difference in parental choice between private and government schools, it is worth noting cases of fake enrollment numbers for government schools. In 2017, 10% more students were enrolled in elementary school than there were children in Uttar Pradesh, indicating over-reporting of enrollment especially in government schools (Datta and Kingdon 2021).

Table 3.1:

States	Total enrollment in surveyed budget private schools (pre-COVID)	Total surveyed budget private schools	Average enrollment in surveyed budget private schools (1)	Total recognized private school enrollment (U-DISE 2019-20)	Total number of recognized private schools (U-DISE 2019-20)	Average enrollment in U-DISE recognized private schools (2)	Total government school enrollment (U-DISE 2019-20)	Total number of government schools (U-DISE 2019-20)	Average enrollment in U-DISE government schools (3)
Andhra Pradesh	135,010	264	511.4	3,842,897	15,862	242.27	4,267,020	47,359	90.10
Assam	5,026	15	335	1,402,453	6,084	230.51	5,237,827	52,288	100.17
Haryana	68,675	146	470.37	3,402,400	7,913	429.98	2,123,486	14,542	146.02
Jammu and Kashmir	114,668	404	283.8	1,002,633	5,552	180.59	1,190,212	24,109	49.37
Telangana	122,163	223	547.81	3,720,166	11,621	320.12	2,925,481	30,529	95.83
			420.76			280.70			96.30

Figure 3.1:
Students in Grade I: Pre-COVID vs Post-COVID

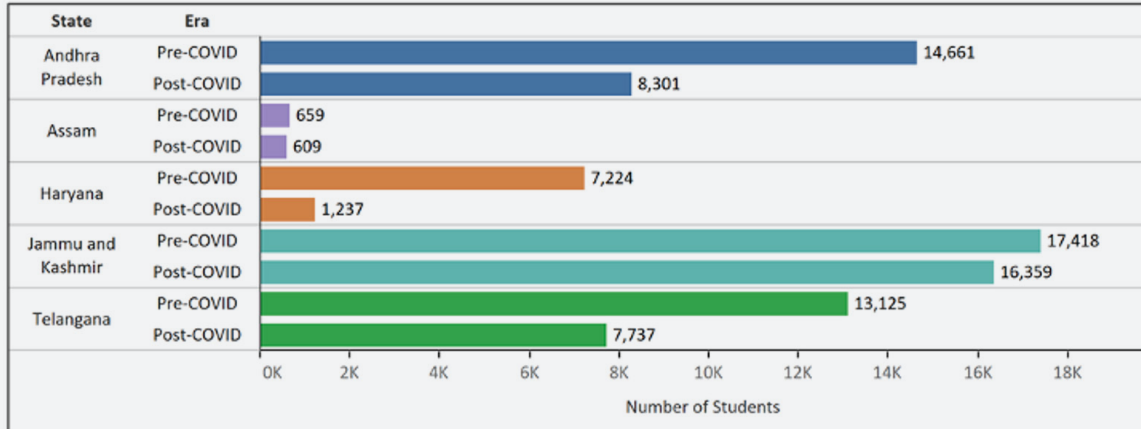


Figure 3.2:
Students in Grade VI: Pre-COVID vs Post-COVID

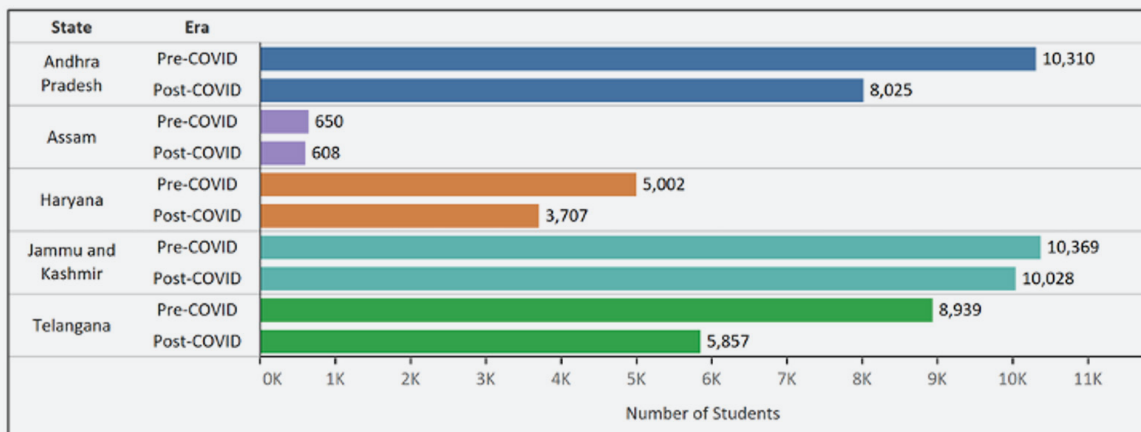


Figure 3.3:
Students in Grade X: Pre-COVID vs Post-COVID

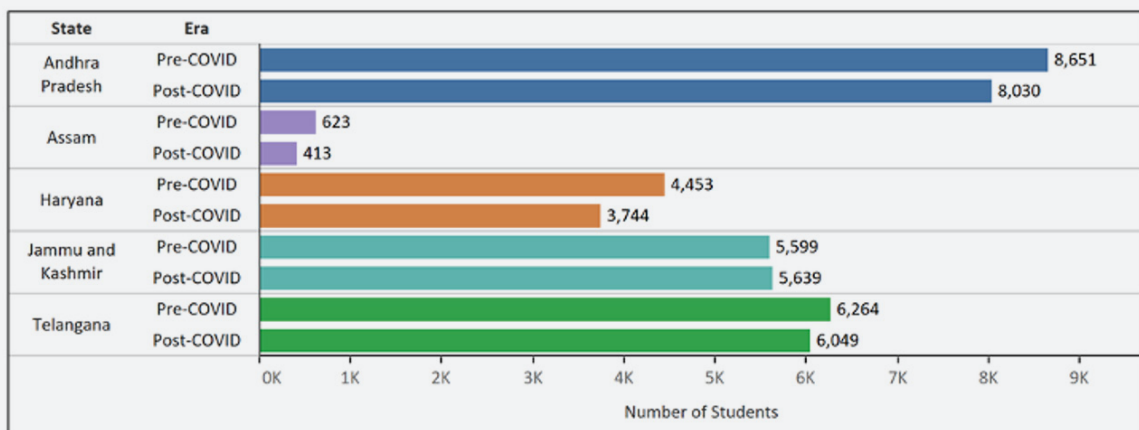
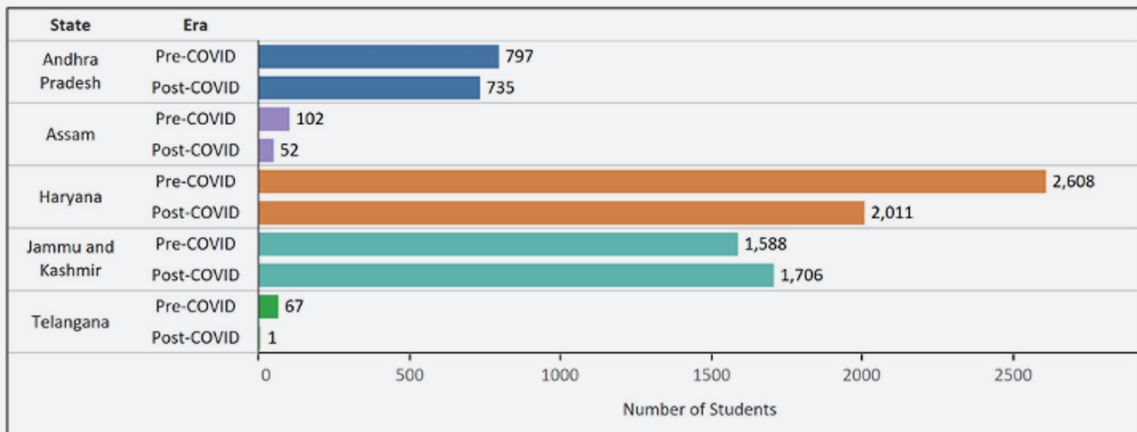


Figure 3.4:
Students in Grade XII: Pre-COVID vs Post-COVID



As per U-DISE 2018-19 data, the transition between different levels of education in both government and private schools remains fairly stable until secondary education. All states see an overall dip in transition from secondary to higher secondary education. In Assam, this dip is even sharper for girls attending higher secondary schools. From 98% of girls moving to secondary schools, only 48.90% move to higher secondary education. Not more than 75% of children continue with higher secondary education across states.

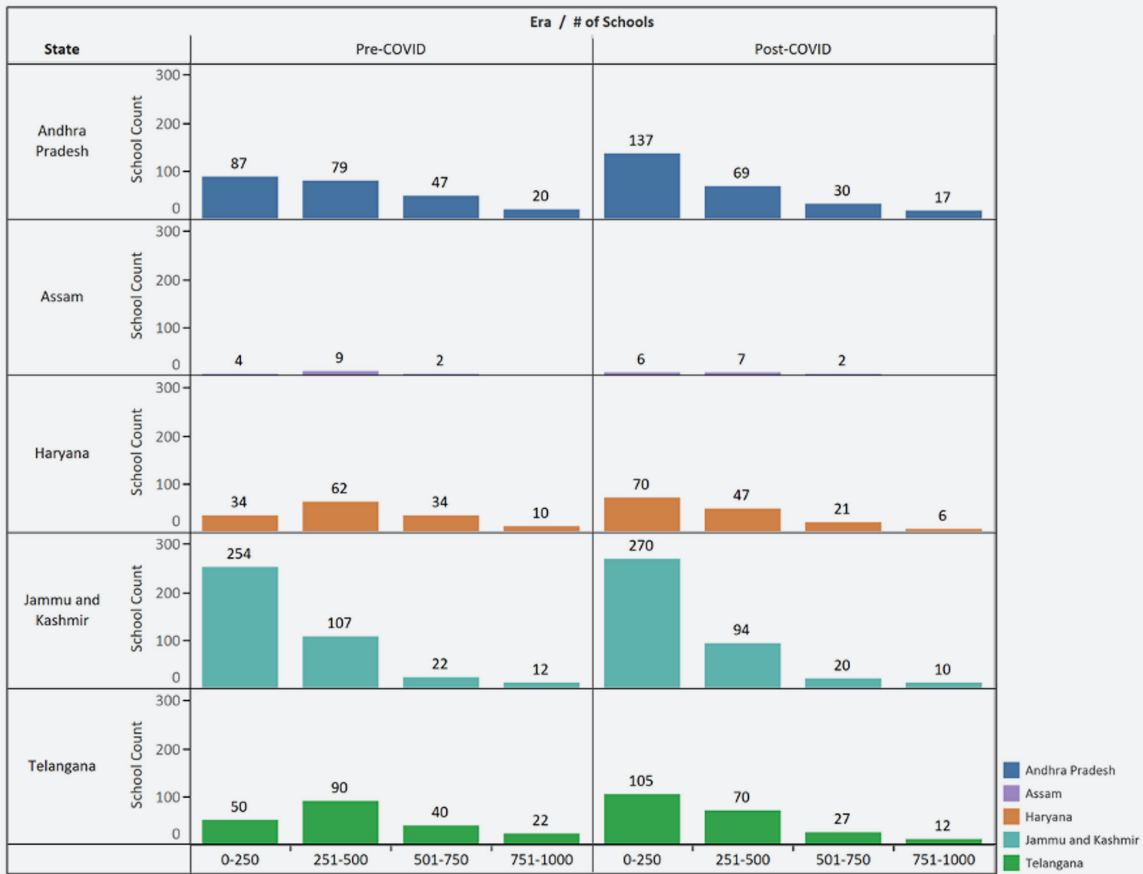
The percentage of female students in total student enrollment across states ranges from 43.74% in Haryana to 46.71% in Jammu and Kashmir. This lines up with the general gender population ratio in each of the states. As per the Civil Registration System 2016, Andhra Pradesh and Haryana have the poorest gender ratio out of all 5 states: 806 and 865, respectively. Assam has a gender ratio of 888, Telangana has 881 and Jammu and Kashmir has 914.

In 2014/15, private schooling was about twice as widespread in urban areas compared with rural regions in 2014/15 (Kingdon 2020). Even in 2002, nearly 64% of children aged seven to eight years were enrolled in private schools in Andhra Pradesh in urban areas (Woodhead, Frost, and James 2013). Although access remains limited in rural areas, enrollment in these rural schools grew sharply from 10% in 2002 to 31% in 2009.

The overall private enrolment levels are higher in urban areas in relative terms; however, private enrolment has grown appreciably in rural areas (Chudgar and Creed 2016). Lower primary private school enrolment increased by 11% in rural districts and by 7% in urban settings from 2005 to 2011. But their descriptive data indicate that gaps in private school access generally may be widening over time. Fewer poor children are enrolling in private schools over time in urban areas. In rural areas, this is particularly true at a lower primary level. But as per 2019–20 U-DISE+ data, more students were enrolled in rural private schools at the primary level (23,414,443) than in urban areas (20,754,436).

Further, 87% of urban low-income parents are sending their children to budget private schools in early childhood in Bengaluru, Delhi and Hyderabad (FSG 2017). Parents associate government schools with poor-quality education and facilities. Parents also feel that government schools are attended by students from poorer families, and do not want their children to associate with them. They prefer 'English-medium' schools to help their child pick up the language for later success. These findings are based on primary customer research of 4,179 households in the National Consumer Classification System classes A3–D1 between April and July 2015 (FSG 2015).

Figure 3.5:
Students Distribution: Pre-COVID vs Post-COVID



Note: The data labels for student 1001+ is not shown as the data is insignificant

2. BUDGET PRIVATE SCHOOLS ARE GENERALLY ESTABLISHED BY INDIVIDUALS AND RUN BY FAMILIES

Most students attending budget private schools are from the local community across the five states. In Andhra Pradesh, 85.23% of children are from the local community. For the remaining four states, these children comprise 92.08%–95.89% of the enrolled student population.

Most studies consider the increase in private schools in India to be driven by demand (Mousumi and Tatsuya 2017). Mond and Prakash (2019), albeit with a limited sample size, pointed out that budget private schools provided education to children who would not have gone to school due to factors such as lack of schools in proximity or distrust of government schools. But Mousumi and Tatsuya

(2017) argued that low-income Muslim families in Okhla and Badarpur in Delhi were ‘compelled’ to send their children to private unaided recognized and unrecognized schools. Private schools are in proximity to communities, which makes parents more likely to choose them. They do not feel secure sending their children to schools that are not located close to their homes. Although parents are happy with the private school teachers’ care for their children, they are discontented with the schools’ fees, their teachers’ credentials and the way teaching and learning are conducted in these schools. Parents reject government schools for the teachers’ insincerity and the prevalence of drugs and physical and verbal abuse but choose to send their children there if these government-run schools exist in proximity. While government school teachers are qualified, parents are not satisfied with the quality of teaching. Private school teachers, instead, are ‘dedicated’ and ‘affectionate’ towards children as

they are held accountable for their performance. This particular sample of parents was inclined towards 'faith-based' teachings that private schools offered well and that too in multiple languages.

Based on 35 household surveys in Okhla and Badarpur in Delhi, the paper seems to not draw any clear, logical conclusion about school choice. There are no data points available to back up arguments laid down against either type of schools, making it difficult to draw a clear picture about parental preferences.

For instance, the study argues 'parent participants looked for schools that were in close proximity to them. Because they had to settle for private schools that were in the vicinity, they also sought schools that offered an Islamic environment because they expected benefits in return for the fees they paid.' Yet no evidence exists to back up the latter statement or an explanation as to why it might be a sub-optimal choice for parents. As per the paper itself, parents and children are opting for private schools in their locality for a multitude of reasons and reject government schools on the basis of proximity, poor quality of teaching and lack of a safe environment. From the anecdotal evidence in the study, parents

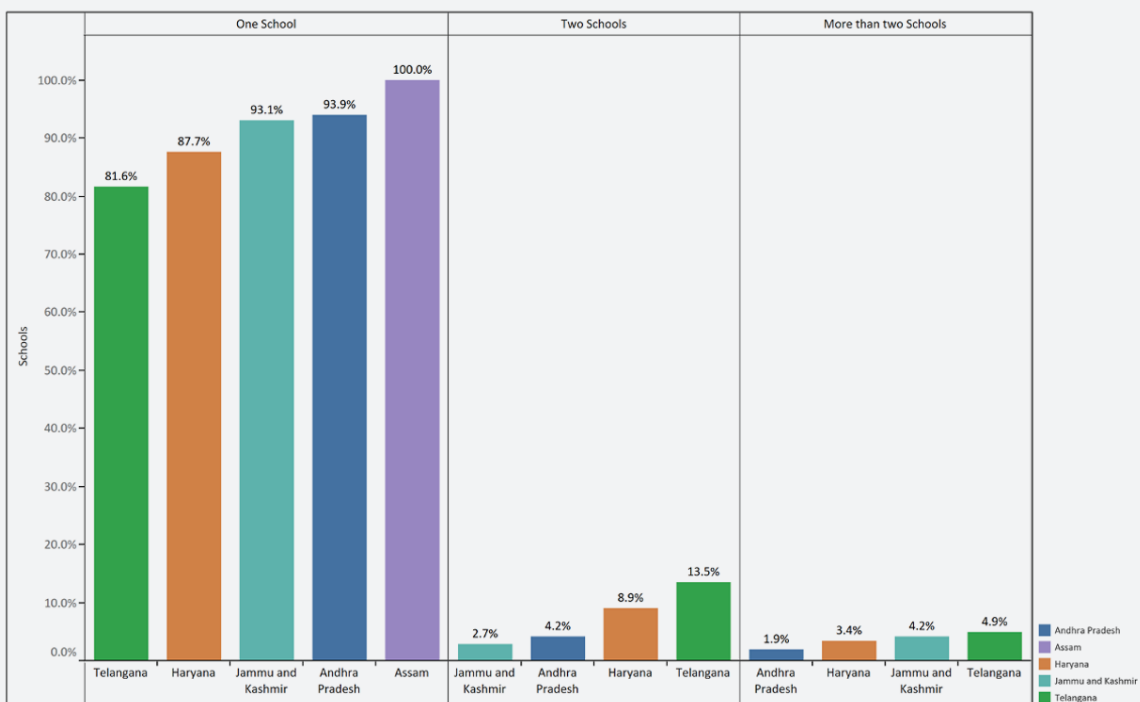
perceive private schools to deliver on these metrics but fail on charging fees and offering public examinations at a later stage, which are catered for in government schools.

The study's argument seems to stem from what could be the ideal situation for parents, such as government schools with free education, top-class teachers and discipline. But these do not exist in the surveyed locality; therefore, parents pick the best option available to them, that is budget private schools.

Across all five states, most budget private schools were established by individuals in the community. In Andhra Pradesh, Assam, Haryana and Telangana, at least 72% of the schools were self/family-owned; in Jammu and Kashmir, the number was a little lower at 64.1%.

In Andhra Pradesh, charitable organizations or a non-governmental organization ranked next. This was the case in Assam as well. Members of the local community were the second most dominant establishing authorities of budget private schools in Haryana and Jammu and Kashmir. Schools established by religious authorities were few except

Figure 3.6:
Scale of School Operation



in Jammu and Kashmir and Haryana. Also, 4% of all surveyed schools in Jammu and Kashmir and 3.4% in Haryana were set up by a religious authority.^{2 3}

More than 80% of surveyed budget private school owners have one school in operation. Moreover, 13.5% and 8.9% of school owners in Telangana and Haryana have two schools. Almost 5% of school owners in Telangana have more than two schools.

Nearly 70%–82% of teachers in Andhra Pradesh, Telangana, Assam and Haryana are female. The male participation as teachers is far higher in Jammu and Kashmir compared with other states, with 52% of teachers being female in the surveyed schools.

3. BUDGET PRIVATE SCHOOLS OFFER QUALITY EDUCATION AT LOW COSTS

Of the parents who chose government schools, 26% chose affordability concerns. Only 23% of parents chose government schools for the quality of teaching and learning (Azim Premji Foundation 2018). One of the questions the report leaves unanswered is where these parents would go if school expenses were to be taken care of. For parents who choose private schools, 37% choose for quality of teaching and learning, 11% for discipline and 16% for English medium. The study alleges information asymmetry based on the finding that out of 52% English-medium schools, 18% had actually a ‘mixed’ medium of instruction, that is, they did not fully teach in English. But the study fails to support this argument with an analysis of how parents perceive the quality of teaching and learning in private schools and whether this ‘mixed’ medium of instruction is a concern for them or the best-possible option available.

Instead, the report shows a mismatch between parental perception and reality in teacher characteristics for private schools. But only 5% of

parents who choose private schools choose them for teacher characteristics. This is not sufficient to argue that parents are making sub-optimal decisions. Teacher presence and involvement in the classroom are equally pertinent. Private school teachers are more active and involved with their students compared with government school teachers (Muralidharan and Sundararaman 2014). The Azim Premji Foundation (2018) report itself points out that private school teachers give more homework and remedial classes for students who are unable to cope up in English.

The APF (2018) study also argues that marketing by private schools reinforces the cultural aspirations of parents, and dilutes the importance of ‘actual educational outcomes’. It is not clear why it is incorrect for parents to aspire to ‘non-educational parameters’ such as English fluency and discipline, especially when these skills expand entry into the job market and higher education.

Budget private schools across the five states charge fees between INR 568 and INR 3,848 starting at pre-primary levels.

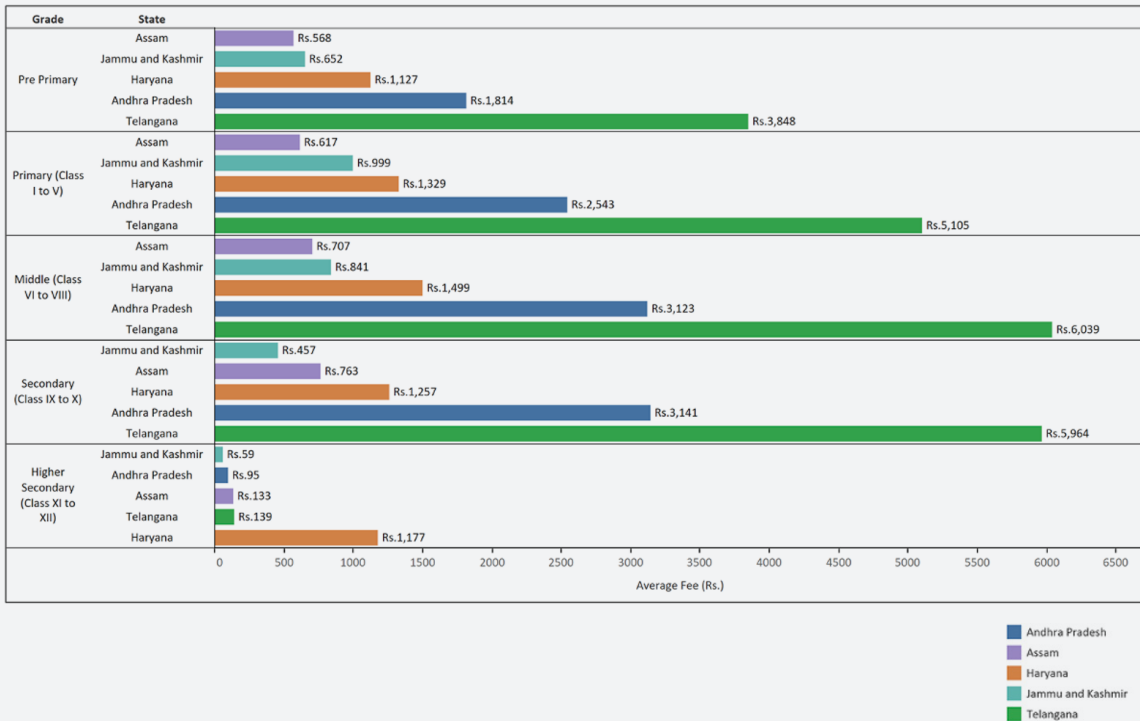
Table 3.1:

States	Per-capita income (2011 census data)	Annual per-child expenditure (2014)
Andhra Pradesh	37,061	13,864
Assam	20,193	10,874
Haryana	54,884	17,817
Jammu and Kashmir	26,344	18,304
Telangana	–	21,634

2 Only 84 schools in our sample were registered as minority educational institutions. These included 4 schools in Assam, 8 in Haryana, 10 in Telangana, 13 in Andhra Pradesh and 49 in Jammu and Kashmir. Only 8 schools in our sample took financial aid from the government that assisted 1%–33% of the school's needs. Separately, 50 schools across Jammu and Kashmir, Haryana, Telangana and Andhra Pradesh responded that charitable and other private organizations assisted school's financial needs. Of these, 24 schools responded that 1%–33% of their financial needs were met by charitable and other organizations. Nine schools said that these organizations met 100% of their needs.

3 77 respondents who chose ‘Others’ gave a variety of responses, including educational societies, political leaders and family friends.

Figure 3.7:
Average Fees



The surveyed schools in Telangana charge a relatively higher amount than other states. Schools charge INR 3,848 (\$52.58) for pre-primary, INR 5,105 (\$69.76) for primary, INR 6,039 (\$82.52) for middle, and INR 5,964 (\$81.50) for secondary classes per month. As per government announcements, Telangana annual per-child expenditure may go up to INR 64,000 (\$874.8) (Parasa 2019). The annual expenditure on the education of each student in Telangana government schools also increased from INR 3,782 in 2004/05 to INR 21,634 in 2014/15. The cost of budget private schools is at par with that of government expenditure in the state.

The fees charged by budget private schools is a ‘substantial’ share of family earnings (Endow 2019). Further, 72.8% of households in Delhi and 61.3% in Noida paid less than INR 500 for monthly school fees. Of all respondents, 22.3% spent more than INR 5,000 annually on books and uniforms. One-time annual expenses for the majority of respondents were up to INR 1,000. As per Endow, all these costs come around monthly to INR 650 to INR 1,300 per child for Delhi and INR 800 to INR 1,400 per child for Noida and can take up 7%–10% of a low-income

family earning around INR 8,000–18,000 per month. Yet, Kingdon (2020) shows that on average, 26% of rural private school monthly fees is below the state daily minimum wage.

Although budget private schools may provide education at one-third the cost of government schools, their quality of education is only marginally better than that of government schools. Muralidharan and Sundararaman (2014) showed that private schools delivered (slightly) better test score gains than government schools, and did so at substantially lower costs per student. Compared with government schools, private schools in this sample from Andhra Pradesh also spent less time on Telugu and mathematics, and instead spent more time on English, science and social studies (environmental science). Private schools also taught an additional subject, Hindi, which was not taught in government primary schools.

In our survey, schools in Haryana, Andhra Pradesh, Jammu and Kashmir and Telangana strongly agree or agree that their students are learning well: 71.2%, 75%, 62.1.9% and 70.4% of schools, respectively. Also, 37.9% of schools in Jammu and Kashmir

disagree or strongly disagree with the statement. Similarly, 25% of schools in Andhra Pradesh, 28.7% in Haryana and 29.6% of schools in Telangana disagree or strongly disagree that their students are learning well. Moreover, 38.6% of schools in Jammu and Kashmir strongly disagree or disagree that parents are satisfied with their schools. On the contrary, 78.8% of schools in Andhra Pradesh strongly agree and agree with the statement. Similarly, nearly 75% of schools in Haryana strongly agree and agree with this statement.




Since 60% of private unaided schools end before the grade of Board exam testing, it becomes difficult for parents to judge the quality of their schooling options (CSF 2020). As a result, schools tend to differentiate themselves based on other proxies rather than in terms of improvement in core learning outcomes. FSG (2017) also points out that budget private school owners believe that parents judge schools based on English-medium instruction, percentage of students that pass the Board exam, results of entrance exam for other schools (in case the school itself does not offer Board exam-levels), physical infrastructure, technology and 'discipline' and 'confidence' exhibited by children.

4. BUDGET PRIVATE SCHOOLS COMPLY WITH LEGAL REQUIREMENTS AND OFFER ADDITIONAL FACILITIES

The RTE Act mandates all private schools to be recognized. No school may be set up, and no existing school may continue to operate without RTE recognition. This certification requires schools to meet certain standards such as at least one classroom for every teacher and an office-cum-store-cum-Head teacher's room, barrier-free access, separate toilets for boys and girls, safe and adequate drinking water facility for all children, a kitchen where mid-day meal is cooked in the school and a playground.⁴

- Although almost all schools had a library and a boundary wall as per recognition requirements of the RTE Act, most of them did not provide barrier-free access for children with special needs. Also, 77% of all private recognized schools across India, as per U-DISE+ 2019/20 data, and 87.8% of government schools had a library. Further, 10% of private recognized


schools and 37.7% of government schools did not have a boundary wall. Only 45.4% of private recognized schools had a ramp as per the RTE Act, while 76.4% of government schools complied with this requirement


 % of schools with barrier-free access for disabled children	<i>Andhra Pradesh</i>	26.1 ✓
	<i>Assam</i>	20
	<i>Haryana</i>	58.9
	<i>Jammu and Kashmir</i>	45.8
	<i>Telangana</i>	34.5
 % of schools with a library	<i>Andhra Pradesh</i>	92 ✓
	<i>Assam</i>	73.3
	<i>Haryana</i>	89.7
	<i>Jammu and Kashmir</i>	81.4
	<i>Telangana</i>	88.8
 % of schools with a boundary wall	<i>Andhra Pradesh</i>	92.4 ✓
	<i>Assam</i>	93.3
	<i>Haryana</i>	97.3
	<i>Jammu and Kashmir</i>	91.6
	<i>Telangana</i>	92.8


- Moreover, 20% of schools in Assam disagreed with the statement that they had an adequate focus on hygiene and sanitation. In Jammu and Kashmir, 38.1% of schools strongly disagreed or disagreed with this point. At the same time, 61.9% of schools strongly agreed or agreed with the statement. In Andhra Pradesh, Haryana and Telangana, 19.7%, 23.3% and 25.1% of schools strongly disagreed or disagreed. Nearly half of all surveyed schools across Jammu and Kashmir, Haryana, Telangana and Andhra Pradesh did not have access to a drainage and sewage network laid down by a municipality or a Government authority for sanitation. The statistics are similar for the regular supply of drinking water from the municipality or a Government authority for Andhra Pradesh,


⁴ As per [F.No. 1-15/2020 - EE 4 \(Pt.\)](#), the Ministry of Education stated that schools did not need to provide this facility on their premises. Access to playgrounds would be sufficient compliance with the norms.

Haryana and Telangana. This would have had serious implications for safe drinking water facilities and toilets for students as per the RTE conditions. Yet, almost all schools in all five states reported that they were able to provide safe drinking water to all students and separate toilets for boys and girls. U-DISE+ data, self-reported by schools, also reflects similarly high compliance with these metrics for both government (97%) and private schools (98.2%) across India. Given the lack of access to proper drainage facilities, school owners might have falsely responded positively to these queries to maintain their reputation and compliance with regulations. As per our analysis, as school fees increased, the chances of getting regular supply of water from the municipality decreased. This implied that these schools were less dependent on municipalities for water. In addition, although a separate toilet for boys and girls did not drive female participation, access to safe and adequate drinking water did positively impact female participation in schools.

		✓
 <p><i>% of schools with a government-laid drainage and sewage network</i></p>	Andhra Pradesh	55.3
	Assam	20
	Haryana	38.4
	Jammu and Kashmir	50.7
	Telangana	65.5

		✓
 <p><i>% of schools with a regular government supply of drinking water</i></p>	Andhra Pradesh	47
	Assam	-
	Haryana	53.4
	Jammu and Kashmir	80.2
	Telangana	56.1

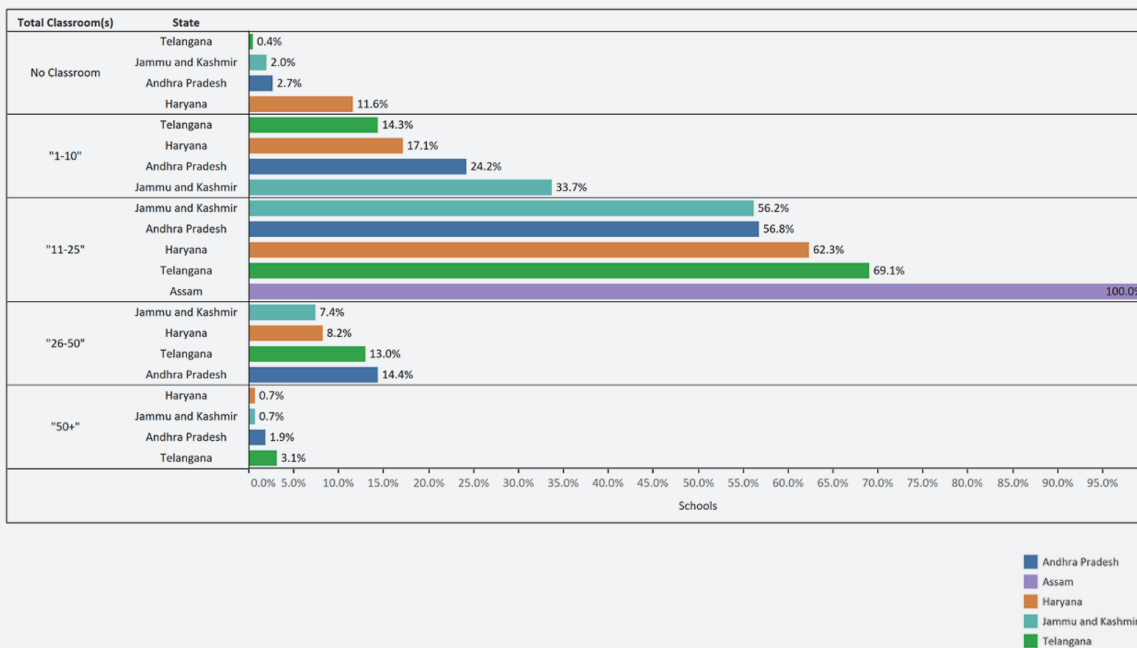
		✓
 <p><i>% of schools with safe and adequate drinking water facility</i></p>	Andhra Pradesh	100
	Assam	100
	Haryana	100
	Jammu and Kashmir	99.8
	Telangana	98.2

		✓
 <p><i>% of schools with separate toilets for boys and girls</i></p>	Andhra Pradesh	99.6
	Assam	100
	Haryana	99.3
	Jammu and Kashmir	98
	Telangana	100

- When asked schools to rate themselves on school safety, 80.3% of schools in Andhra Pradesh, 80% of schools in Assam, 75.1% of schools in Haryana, 61.6% in Jammu and Kashmir and 74.9% in Telangana either strongly agreed or agreed that they provided an adequate focus on school safety. Also, 36.5% of schools in Jammu and Kashmir strongly disagreed or disagreed with the statement. Nearly 40% of schools in Jammu and Kashmir strongly disagreed or disagreed that they had good physical infrastructure; 60.9% of schools strongly agreed or agreed with the statement. Similarly, 76.6% in Andhra Pradesh, 73.3% of schools in Assam, 71.2% of schools in Haryana and 70.8% of schools in Telangana strongly agreed or agreed on this point.
- All schools in Assam had 11–25 classrooms. Same was the case for nearly 70% of schools in Telangana, 62.3% in Haryana and 56.2% in Jammu and Kashmir. Strikingly, 11.6% of schools in Haryana mentioned that they had no classrooms or rooms. This was also the response of 2.7% of schools in Andhra Pradesh, 2% in Jammu and Kashmir and 0.4% in Telangana.

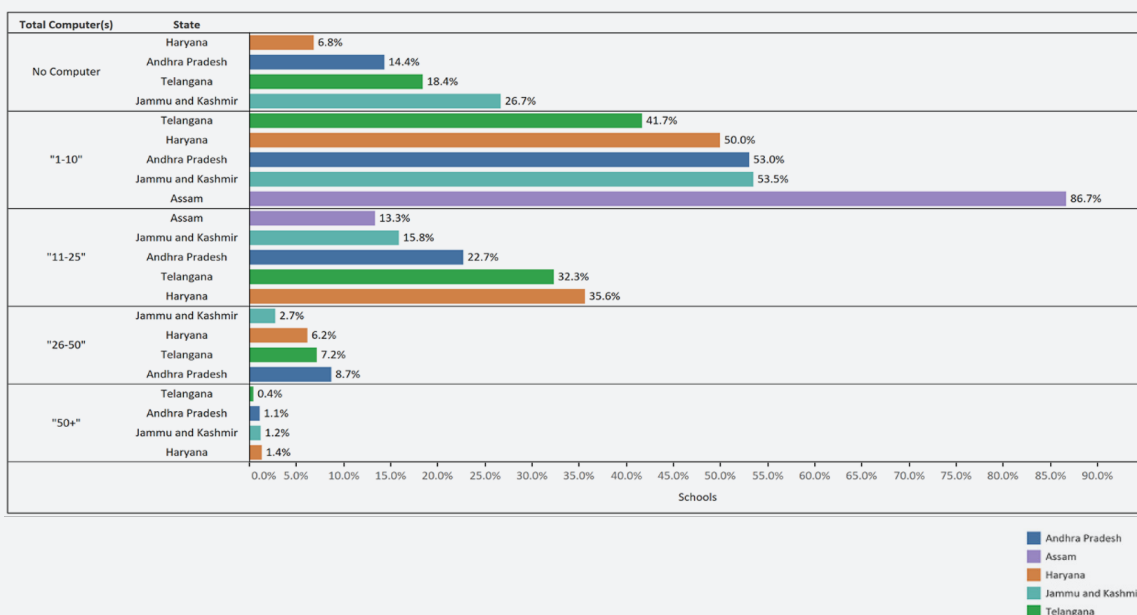
- Nearly all schools across Andhra Pradesh, Assam, Haryana and Telangana have fans available in all rooms. Further, 59.2% of schools in Jammu and Kashmir do not have fans in rooms, but this can be partially due to a lack of need for the same given the cold weather in the Kashmir region.

Figure 3.8:
Total Classrooms



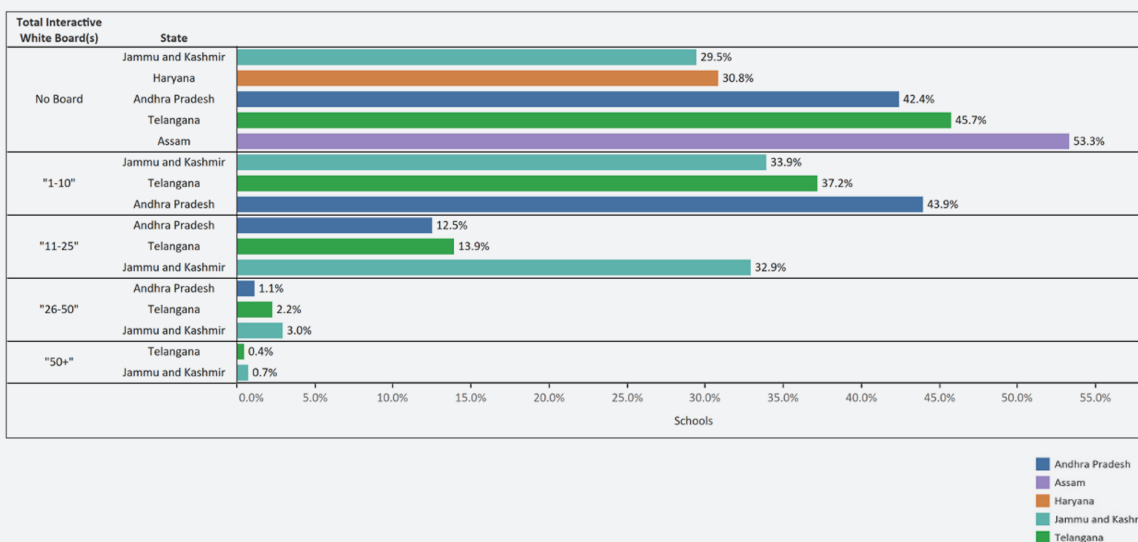
- All schools in Assam also have computers available for students. However, 14.4% of schools in Andhra Pradesh, 6.8% in Haryana, 18.4% in Telangana and 26.7% in Jammu and Kashmir do not have this facility available.

Figure 3.9:
Total Classrooms in Schools



- Only half of the surveyed schools could afford interactive white boards and smart classrooms. Haryana and Jammu and Kashmir fared well on this metric; 69.2% of the schools in Haryana and 70.5% in Jammu and Kashmir had these interactive tools available in the classroom.

Figure 3.10:
Total Interactive White boards in Schools



- Moreover, 37.6% of schools in Haryana, 40.6% in Jammu and Kashmir and 36.7% in Telangana strongly disagreed or disagreed that they provided adequate facilities. More than 70% of schools in Andhra Pradesh agreed or strongly agreed with the statement. Nearly 60% of schools in Haryana, Jammu and Kashmir and Telangana agreed or strongly agreed that they provided adequate sports facilities.

5. BUDGET PRIVATE SCHOOLS EMPHASIZE QUALITY CHECKS THROUGH REGULAR MEETINGS

Schools also organize parent–teacher meetings. In Andhra Pradesh and Assam, 43.9% of schools and 73.3% of schools held parent–teacher meetings once every quarter. Also, 30.1% of schools in Haryana, 39.5% of schools in Telangana and 20% of schools in Jammu and Kashmir also held these meetings on a quarterly basis. Further, 59.6% of schools in Haryana mentioned that they held these meetings once every month compared with 39.5% of schools in Telangana, 33.2% of schools in Jammu and Kashmir, 13.3% of schools in Assam

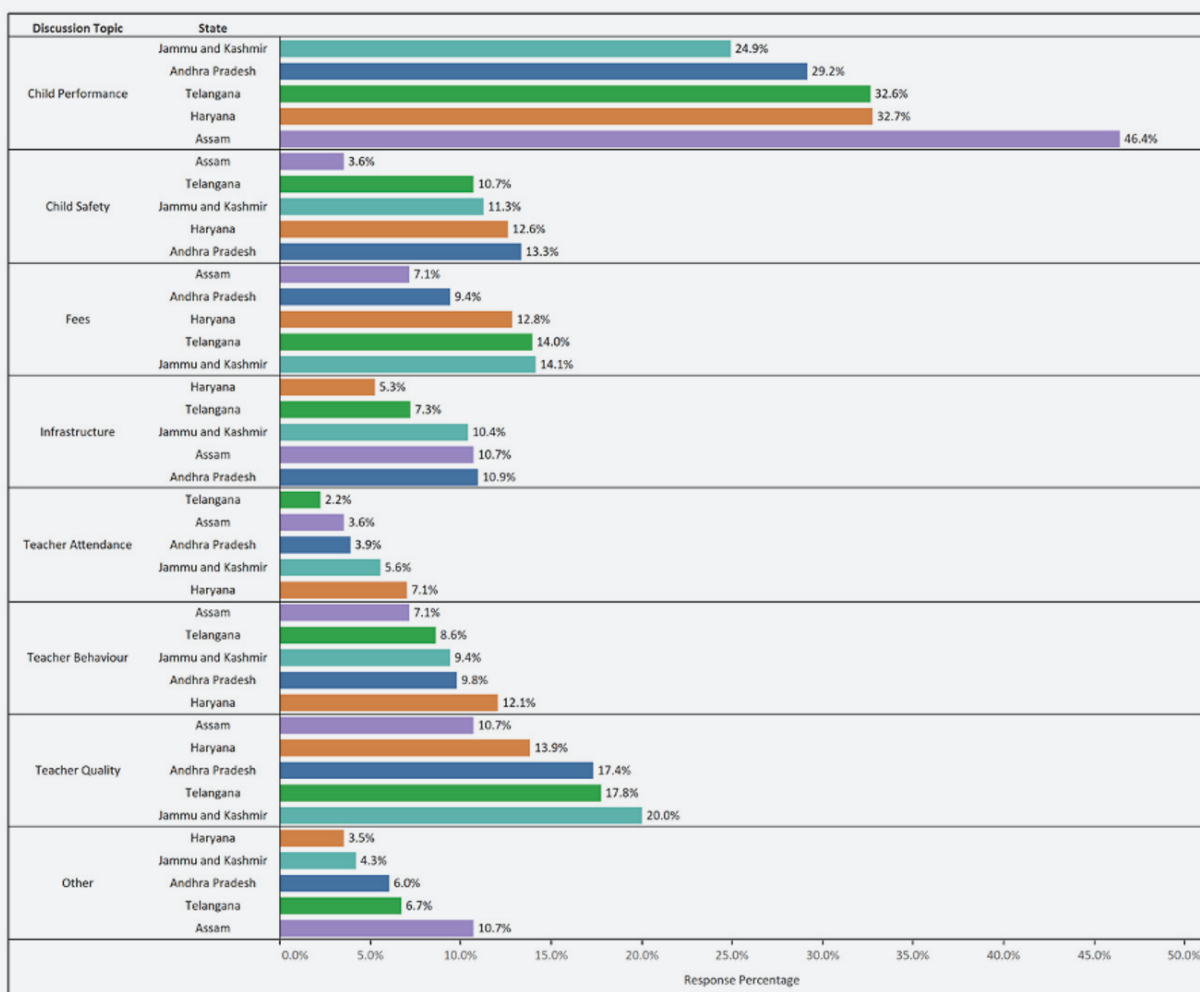
and 13.6% of schools in Andhra Pradesh. Only 3.4% of schools in Haryana held parent–teacher meetings once a year. Moreover, 18.3% of schools in Jammu and Kashmir reported hosting these meetings once a year. It is possible that parents were more engaged in the learning outcomes of their children, considering the high frequency of meetings in Haryana. This is reflected in the wide difference between the percentage of Grade V students who could read a Grade II—level text in Haryana (78.3), Andhra Pradesh (22.5) and Telangana (47.0).

Child performance and teaching quality were the most commonly raised issues during a parent teacher meeting. This signals that learning outcomes and quality of education being imparted are the most critical discussion points for private schools and parents. But this was not acknowledged by government policies and law until the Kasturirangan Committee (2019) and the National Education Policy (2021). These policies emphasized the role of assessments for tracking learning progress and proposed shifting the overall regulatory focus from inputs to outcomes.

The fee was the third significant topic, followed by child safety and infrastructure. This may also be

linked to the teaching quality from the perspective of the school. When asked if schools had good-quality teachers, nearly 30% of schools in Jammu and Kashmir disagreed with the statement. Similarly, around 20% of schools in the remaining four states reported the same.⁵

Figure 3.11:
Topics Discussed During Parents-Teacher Meeting

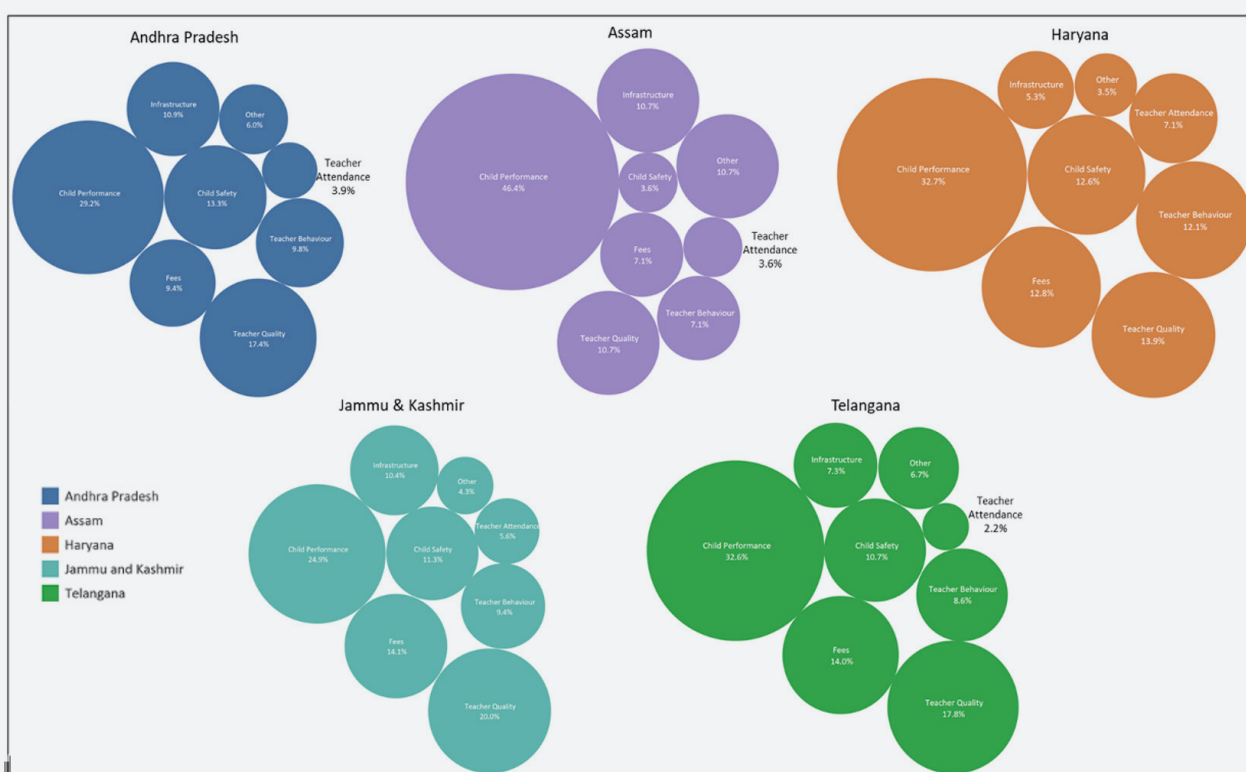


⁵ Schools that reported 'Other' put forth topics such as problems in schools, sports and moral education. One school in Haryana responded saying that no parent-teacher meeting had been held so far.

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Figure 3.12:
Total Discussed During Parents-Teacher Meeting



The fee was the third significant topic, followed by child safety and infrastructure. This may also be linked to the teaching quality from the perspective of the school. When asked if schools had good-quality teachers, nearly 30% of schools in Jammu and Kashmir disagreed with the statement. Similarly, around 20% of schools in the remaining four states reported the same⁶

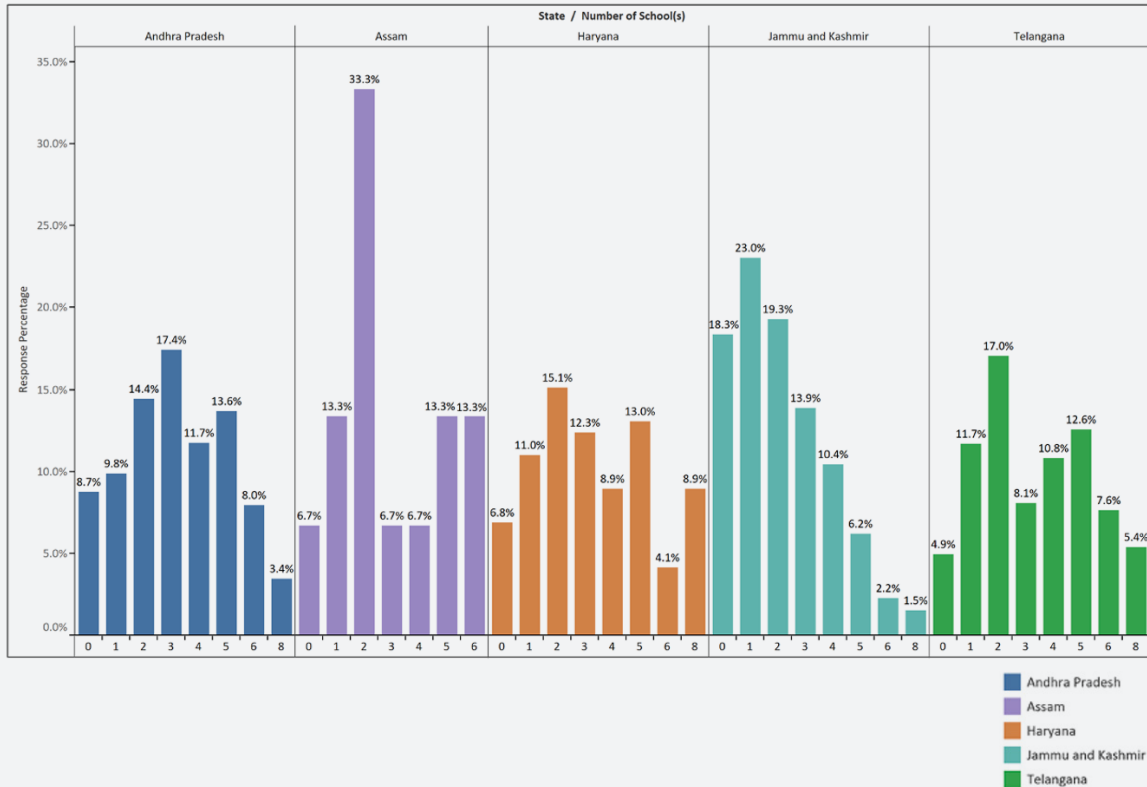
to the school principal or relevant teacher. This is common across all states. Parent-teacher meeting is another avenue for raising concerns alongside online communication through modes such as WhatsApp, e-mails and phone calls. A small portion of schools also responded that parents might also opt for suggestion boxes.

In the case of any communication needs, parents most likely opt to visit the school physically and talk

⁶ Schools that reported 'Other' put forth topics such as problems in schools, sports and moral education. One school in Haryana responded saying that no parent-teacher meeting had been held so far.

6. BUDGET PRIVATE SCHOOLS GENERALLY HAVE AT LEAST ONE OTHER SCHOOL IN THEIR PROXIMITY

Figure 3.13:
Total School Within 10 Mins Walking Distance



The RTE Act, 2009, provided for free and compulsory education to all children aged 6–14 years. Section 3 of the Act requires that

Every child of the age of six to fourteen years, including a child referred to in clause (d) or clause (e) of section 2, shall have the right to free and compulsory education in a neighbourhood school till the completion of his or her elementary education

To do so, one of the main provisions of the Act is that of 'neighbourhood schools'. As per Section 6, 8(b) and 9(b) of the Act, state governments and local authorities must establish schools in neighbourhoods as defined and ensure availability of the same to children.

Section 6: For carrying out the provisions of this Act, the appropriate Government and the local

authority shall establish, within such area or limits of neighbourhood, as may be prescribed, a school, where it is not so established, within a period of three years from the commencement of this Act.

Section 8(b): The appropriate Government shall ensure availability of a neighbourhood school as specified in section 6;

Section 9(b): Every local authority shall ensure availability of a neighbourhood school as specified in section 6;

These regulatory measures of the RTE Act should have resulted in at least one government school in the neighbourhood or within 10 minutes of walking.

We documented the schooling market for each state by asking each respondent to mention schools

within 10 minutes of walking. Less than 9% of schools in Andhra Pradesh, Assam, Haryana and Telangana had zero schools in their vicinity. Also, 18.3% of schools in Jammu and Kashmir had zero schools within walking distance. Further, 23% of schools in Jammu and Kashmir had one school in their vicinity. Moreover, 9.8% of schools in Andhra Pradesh, 11.7% of schools in Telangana, 11% of schools in Haryana and 13.3% of schools in Assam had one school nearby.

In Andhra Pradesh, 54.1% of schools had three or more than three schools within their proximity. Similarly, in Haryana, 47.2% of schools reported the same. Also, 34.2% of schools in Jammu and Kashmir had more than three schools in their vicinity and so did 44.5% of schools in Telangana. Further, 46.7% of schools in Assam also mentioned that there were more than three schools within walking distance. With three or more schools within walking distance, these states fare well on providing school choice to parents and encourage competition and high quality of services among the neighbourhood schools. Jammu and Kashmir still has a lower school density than that of other states and should be an area for future research.

The surveyed schools mentioned that most private schools within a 10-minute radius either charged the same price or quoted a higher price than their school. For instance, in Assam, 58.8% of schools responded that neighboring private schools charged higher fees.

Also, 6.1% government schools in Andhra Pradesh, 13.3% of schools in Assam, 9.6% of schools in Haryana, 5.7% of schools in Jammu and Kashmir and 13.5% of schools in Telangana had no government schools within walking distance. Further, 12.9% of schools in Andhra Pradesh, 6.7% of schools in Assam, 7.5% of schools in Haryana, 22% of schools in Jammu and Kashmir and 7.6% of schools in Telangana had no private schools within 10 minutes of walking.

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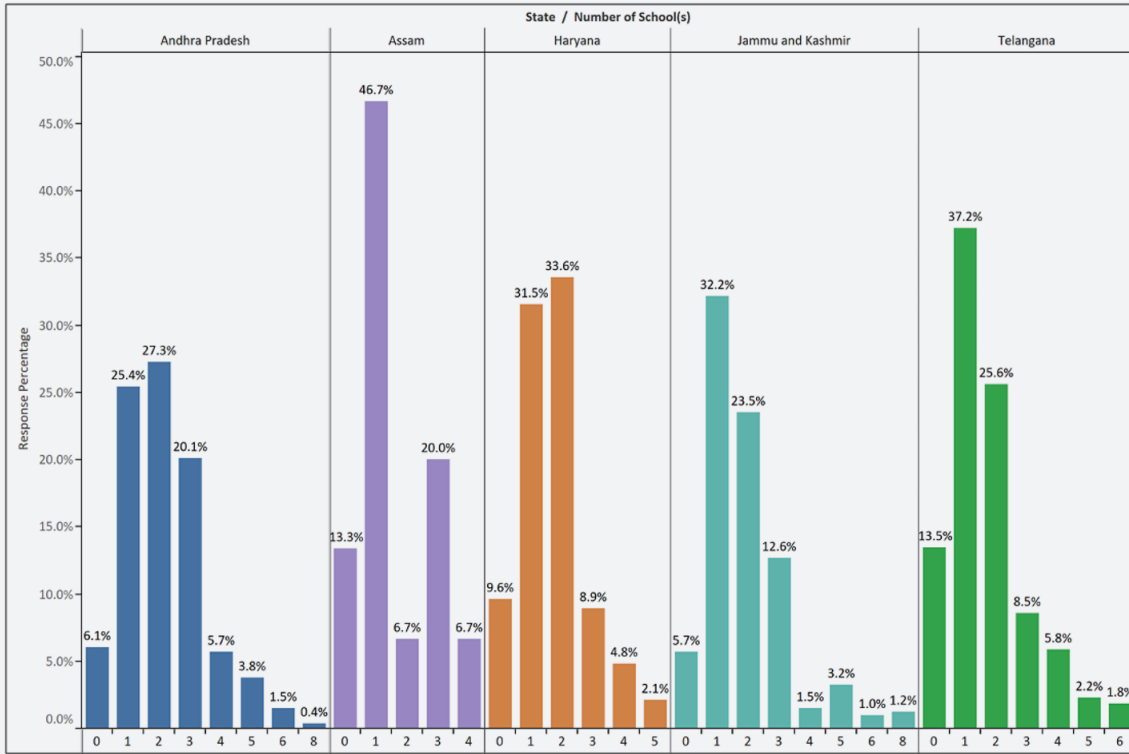
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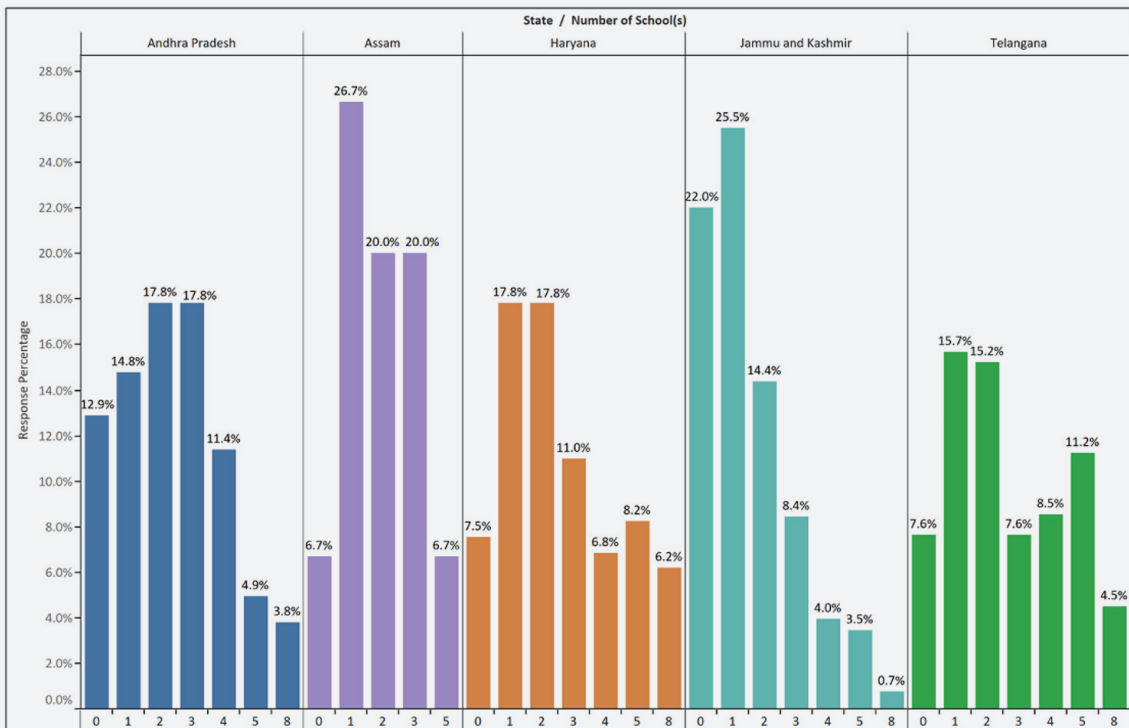
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Figure 3.14:
Total Government School Within 10 Mins Walking Distance



***Moreover, 68.5% of schools in Andhra Pradesh, 40% in Assam, 58.9% of schools in Haryana, 62.1% of schools in Jammu and Kashmir and 49.3% in Telangana had more than one government school in their vicinity. Also, 72.3% of schools in Andhra Pradesh, 66.6% of schools in Assam, 74.7% of schools in Haryana, 52.5% of schools in Jammu and Kashmir and 76.6% of schools in Telangana had more than one private school nearby.

Figure 3.15:
Total Private School Within 10 Mins Walking Distance





CHAPTER

4

De Jure Versus De Facto
Regulations For Budget
Private Schools



Regulation of private education is not a heavily researched area. This is an important gap to fill because regulations have the capacity to stimulate or stifle the market for private education and affect the quality of services offered (Dixon [2004](#)). In this section, we study the broad regulatory framework under which private schools operate and draw out instances of the lack of focus on outcomes, excessive discretion and ambiguities in the law, differential treatment for private and government schools and lack of accountability mechanisms that hinder optimal circumstances for the K-12 sector.

1. K-12 LAWS FOCUS ON INPUT-RELATED PARAMETERS INSTEAD OF OUTCOMES FOR DETERMINING ENTRY INTO THE SECTOR

Legislation governing schools in India makes no mention of outcomes throughout states.

We studied the frequency of commonly occurring quality-related words for the school education sector in India for all state laws under our study, the National Education Policy 2020 and the RTE Act, 2009.

Not surprisingly, Government (2,664 times), schools (1,025 times), and teachers (536 times) constituted the main focus of all states. But the focus on parents (80 times) and children (263 times) is far lower. This is a similar pattern in K-12 legislation and policies. For instance, in the Draft National Education Policy 2019, the Prime Minister was referred to in the text more than parents (CCS [2019](#)).

No state law of the 56 states that we studied across 12 states mentioned outcomes. The National Education Policy 2020 referred to monitoring eight times; only Andhra Pradesh and Telangana referred to monitoring under their acts governing parental and community participation in schools (once in Andhra Pradesh and three times in Telangana). Quality also appeared only 11 times across states. Although the National Education Policy 2020 refers to autonomy 21 times, Maharashtra is the only state that mentioned autonomy (four times). This is indicative of how low these aspects of education feature while regulations are drafted to govern K-12 education in India.⁷

⁷ In India, the law may not use terms such as safety, accountability and autonomy. Instead, it may look at indicators of these aspects such as a weather-proof building.

Table 4.1:

Laws	Right to Education Act, 2009	National Education Policy 2020	Andhra Pradesh	Delhi	Gujarat	Haryana	Jammu and Kashmir	Jharkhand	Maharashtra	Kerala	Telangana	Nagaland	Uttar Pradesh	West Bengal	Total
Pupil teacher ratio	0	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Learning achievement	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Learning outcome	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Teacher training	0	0	0	0	0	3	0	0	0	0	0	0	2	0	5
Textbooks	0	18	0	0	0	0	0	0	0	0	0	0	0	1	19
Instructional material	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Class size	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Curriculum	11	63	3	0	1	1	0	1	2	0	4	0	2	12	100
Technology	0	74	2	0	4	0	0	0	2	0	1	0	1	1	85
Pedagogy	0	41	0	0	4	0	0	0	0	0	0	0	0	0	45
Assessment	0	66	7	0	0	0	0	2	2	0	8	0	0	29	114
Mother tongue	1	11	2	0	0	0	0	0	0	0	4	0	0	2	20
Safety	0	11	0	0	0	0	0	0	2	0	0	0	0	0	13
Security	0	4	0	1	0	6	0	0	6	0	0	0	10	0	27
Quality	2	146	4	0	0	1	0	0	2	0	3	0	1	0	159
Autonomy	0	21	0	0	0	0	0	0	4	0	0	0	0	0	25
Inclusion	0	22	0	0	0	0	0	0	0	0	0	0	0	0	22
Inclusive	0	14	2	1	0	0	1	0	0	0	1	0	3	0	22
Accountability	0	9	1	0	0	0	0	0	0	0	0	0	0	0	10
Transparency	0	7	0	0	0	0	0	0	0	0	0	0	0	0	7
Equality	0	9	0	0	2	1	1	1	1	0	1	0	1	4	21
Efficiency	0	8	1	0	0	0	0	0	3	0	1	0	0	0	13
Monitoring	2	8	1	0	0	0	0	0	0	0	3	0	0	0	14
Outcomes	0	38	0	0	0	0	0	0	0	0	0	0	0	0	38
Parents	13	24	11	1	13	0	0	2	4	0	9	0	3	0	80
Government	69	27	340	30	268	160	95	124	393	111	378	6	255	408	2,664
Schools	4	145	80	40	114	63	36	37	165	68	95	6	84	88	1,025
Students	0	228	20	7	22	6	6	8	46	1	29	0	32	13	418
Children	31	104	29	13	12	4	4	0	16	6	25	0	10	9	263
Teachers	19	146	58	4	25	17	4	5	70	20	25	3	89	51	536

Instead, legislation governing schools in India levies threat of closures in cases of non-compliance.

The RTE Act mandates all private schools to be recognized. No school may be set up, and no existing school may continue to operate without RTE recognition. This certification requires schools to meet certain input standards such as

1. At least one classroom for every teacher and an office-cum-store-cum-Head teacher's room
2. Barrier-free access
3. Separate toilets for boys and girls
4. Safe and adequate drinking water facility for all children
5. A kitchen where mid-day meal is cooked in the school
6. Playground⁸

In an attempt to provide access to education for all children in India, the RTE Act misses focusing on outcomes. The Act does not mention how learning for children can be measured or tracked to capture trends apart from two provisions

Duties of teachers and redressal of grievances:— (1) A teacher appointed under sub-section (1) of section 23 shall perform the following duties, namely:— (a) maintain regularity and punctuality in attending school; (b) conduct and complete the curriculum in accordance with the provisions of sub-section (2) of section 29; (c) complete entire curriculum within the specified time; (d) assess the learning ability of each child and accordingly supplement additional instructions, if any, as required; (e) hold regular meetings with parents and guardians and apprise them about the regularity in attendance, ability to learn, progress made in learning and any other relevant information about the child; and (f) perform such other duties as may be prescribed.

States have also imposed minimum land requirements and infrastructural conditions under this certification that may be difficult for budget private schools to fulfil. For instance, the Assam Non-Government Educational Institutions (Regulation & Management) Act, 2006, requires schools to own at least one bigha (1,600 square yards) of land for administrative recognition of primary and middle

schools. This size of land, at the present day, would cost at least INR 30,00,000 (~\$42,000), that is six times the per-capita income in India.

Assam: 'The 2006 Act is the most challenging. They have asked us to have two acres of land, which is not possible. Land is most challenging here. See eradicating the land crisis is important. See there are CBSE and other schools who get licenses with small land also. But we are unable to get that. My school has been since 1972, but we did not get the recognition because of this land criteria. It is not possible for us to buy land in this city because the price is very very high. We can't afford it. Taking fees of 500, 600, 700 monthly. owning a plot around three crores or four crores is not possible for us. When we talk about one cut of land here is about one crore. And just think if you want to buy two acres of land, how much will it cost!'

Similarly, in Haryana, schools need a minimum of 0.5 acres for primary schools and at least 2 acres of land for secondary and senior secondary schools under the Haryana School Education Rules 2003.

In Jammu and Kashmir, the state law lays down physical facilities that each school must comply with. For instance, middle schools and high schools need to provide one Multipurpose Educational Laboratory with an area of 150 m². But there are no minimum land norms as in the case of Assam and Haryana.

Before the RTE Act, 2009, was passed, the compliance with these norms was not mandatory in most states for private schools. They could continue operating as unrecognized schools without the fear of closure. But after 2009, no private school could operate without recognition under the RTE Act, 2009, and state laws.


The compliance with these standards leads to a projected fourfold increase in per-student expenditure for budget private schools (CCS 2015). Due to their inability to meet such norms, schools are either shut down or remain unrecognized. As per a CCS (2018) study, between April 2015 and March 2018, 4,482 schools were under threat of closure. Also, 13,546 schools were served closure notices by a government authority, and 2,469 schools were closed in the 14 observed states for non-compliance with RTE norms.⁹ As per the school self-reported

⁸ As per [F.No. 1-15/2020 - EE 4 \(Pt.\)](#), the Ministry of Education stated that schools did not need to provide this facility on their premises. Access to playgrounds would be sufficient compliance with the norms.

⁹ Andhra Pradesh, Assam, Bihar, Chhattisgarh, Haryana, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Punjab, Tamil Nadu and Uttar Pradesh.

U-DISE+ 2019–20 data, Haryana and Assam have a significant number of unrecognized private schools compared with other states (998 and 7,483 respectively). In fact, unrecognized schools in Assam outnumber the recognized schools.

Haryana: 'The norms made by the government are so stringent and difficult to get around that one doesn't feel that education is a priority for them at all. The procedure is so draining and long drawn out that a lot of children miss out on going to school at all because of the time it takes to set one up in the first place. It'd be a lot more profitable to open a restaurant instead.'

 % of schools that paid more than what was officially required for recognition		✓
	Andhra Pradesh	72.3
Assam	-	
Haryana	42.5	
Jammu and Kashmir	35.1	
Telangana	80.3	

Further, 80.3% of recognized budget private schools in Telangana said that they had to pay more than what was officially required to obtain recognition; similarly, 72.3% recognized schools in Andhra Pradesh said the same. Only 35.1% and 42.5% of recognized schools in Jammu and Kashmir and Haryana respectively, had to offer additional money for the certification.

Haryana: 'We can't work without bribing. It happens every time without fail. CBSE processes are much more transparent but with the Haryana State Board, it's impossible to get work done without bribing. I spent about 23 lakhs on just bribing this year.'

Jammu and Kashmir: 'I cannot explain the extent of corruption here. It feels like most of these government officials do not have salaries and they have to take bribes for survival. We are helpless.'

The threat of school closures, unfortunately, has limited clarity and no consistency in implementation. Under Section 18(3) of the RTE Act, orders on derecognition have two conditions:

On the contravention of the conditions of recognition, the prescribed authority shall, by an order in writing, withdraw recognition:

Provided that such order shall contain a direction as to which of the neighbourhood school, the children studying in the derecognized school, shall be admitted:

Provided further that no recognition shall be so withdrawn without giving an opportunity of being heard to such school, in such manner, as may be prescribed.

For the first condition on shifting to neighbourhood schools, the law is silent on how these neighbourhood schools will be chosen and the selected schools will accommodate the change in the pupil–teacher ratio.

When it comes to the second condition, state governments have issued derecognition orders without following due process. In 2013, the state of Haryana issued show cause notices to all unrecognized schools to explain why it must not take action against them. The schools were given 15 days to submit their responses. Subsequently, in September 2013, an order was passed to close the schools who then filed a petition in the High Court of Punjab and Haryana. In [2015](#), the High Court of Punjab and Haryana overturned these derecognition orders issued by the Haryana Department of Education. The Department had not followed due process of detailing violations committed by the schools and their response to show cause notices. The High Court held that regardless of non-compliance of schools, the government was bound to follow 'a modicum of procedure' before passing orders on school closures (CCS 2019).

In Punjab, for example, schools were not issued any closure notices. School closures 'happened either through phone or by visiting the school directly'. In the absence of guidelines for school evaluators, the decision to close was defined by the relationship between the school and the officer, opening channels for corrupt practices (CCS [2014](#)).

The National Education Policy 2020 recognizes the issues created by the 'overemphasis on inputs and the mechanistic nature of their specifications – physical and infrastructural'. It proposes to make these requirements 'more responsive to realities on the ground, for example regarding land areas and room sizes, practicalities of playgrounds in urban areas, and so forth. These mandates will be adjusted and loosened, leaving suitable flexibility for each school to make its own decisions based on local needs and constraints, while ensuring safety, security and pleasant and productive learning

space'. [The mid-term](#) appraisal of the 11th Five-Year Plan also pinpointed easing entry barriers and revisiting norms such as land requirements as some of the key elements of the reform agenda (Planning Commission 2011). Similarly, the Kasturirangan Committee in 2019 pointed out that in order to ease entry for schools and encourage alternative models of education, the RTE Act requirements for schools should be made 'substantially less restrictive'.

The focus will be to have less emphasis on input and greater emphasis on output potential with respect to desired learning outcomes. Regulations on inputs will be limited to ensuring safety of children (both physical and psychological), access and inclusion, the nonprofit nature of schools, and minimum standards for learning outcomes. Enabling the construction of quality schools by all parties with greater flexibility will create greater educational choices for students and healthy competition among schools, leading to enhanced access to more and higher-quality schools (including higher-quality government schools).

2. K-12 LAWS FAIL TO PROVIDE APPROPRIATE SAFEGUARDS FOR THE GOVERNMENT EXERCISE OF POWER

Legislation grants tremendous discretionary powers to the executive not guided or limited by safeguards.

The executive authority of the State has expanded significantly since the early 1900s with the government now wielding a wide range of adjudicative and legislative powers. In education too, the government exercises discretionary powers at various touchpoints starting from the opening of a school to its closure. As the scope for exercising discretion increases, so does the room for arbitrariness (Frankfurter [1927](#)). Administrative safeguards protect against excesses committed by the government in this regard and impose absolute limits on the powers it may exercise (Edward 1984).

We evaluated recognition and permission to establish new schools norms across our 12 states on these administrative safeguards for the government exercise of rule-making and decision-making powers. A law that lacks such safeguards leaves room for abuse of powers by the executive and fails to protect individual liberties. The lower the negative score, the worse is the state performance on our index. This analysis is the first of its kind where we specifically evaluate states on how well they accommodate entry into the education market.

As per our scoring, Jharkhand fared the best on administrative safeguards despite failing to provide an opportunity for the applicant to be heard before their application was rejected. Incidentally, West Bengal was the only state that provided this provision yet performed the worst overall out of the 12 states because it has several state-level laws that govern entry and recognition into the K-12 market. Jharkhand, in comparison, only has state RTE Rules that regulate school education.

PROCEDURAL SAFEGUARDS

States	Laws	Does the legislation confer upon the executive the authority to grant approval/ permission to establish?	Does the legislation define criteria/conditions for grant of approval?	Score	Does the legislation set a time limit for the grant of recognition?	Score	Is there a penalty/repercussions for not meeting the time limit?	Score	Does the legislation mandate the decision-making authority to provide reasons in writing for denial of recognition?	Score	Does the legislation mandate a pre-decisional hearing (or issuance of a show-cause notice) in the case of denial of approval?	Score	Does the legislation allow for appeal against the decision on denial of approval?	Score	Total score (Procedural safeguards)
Andhra Pradesh	Andhra Pradesh Education Act, 1982 (Recognition)	Yes	No	-1	No	-1	No	-1	Yes	0	No	-1	Yes	0	-4
	Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration and Control of Institutions of Higher Education) Rules, 1987 (Recognition)	Yes	Yes	0	No	-1	N/A	0	No	-1	No	-1	No	-1	-4
	Andhra Pradesh Education Act, 1982 (Permission to establish)	Yes	Yes	0	No	-1	N/A	0	No	-1	No	-1	No	-1	-4
	Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration and Control of Institutions of Higher Education) Rules, 1987 (Permission to establish)	Yes	Yes	0	Yes	0	No	-1	No	-1	No	-1	No	-1	-4

States	Laws	Does the legislation confer upon the executive the authority to grant approval/ permission to establish?	Does the legislation define criteria/conditions for grant of approval?	Score	Does the legislation set a time limit for the grant of recognition?	Score	Is there a penalty/repercussions for not meeting the time limit?	Score	Does the legislation mandate the decision-making authority to provide reasons in writing for denial of recognition?	Score	Does the legislation mandate a pre-decisional hearing (or issuance of a show-cause notice) in the case of denial of approval?	Score	Does the legislation allow for appeal against the decision on denial of approval?	Score	Total score (Procedural safeguards)
	Andhra Pradesh Right of Children to Free and Compulsory Education Rules, 2010 (Recognition)	Yes	Yes	0	Yes	0	No	-1	No	-1	No	-1	No	-1	-4
Delhi	Delhi School Education Act, 1973 (Recognition)	Yes	Yes	0	Yes	0	No	-1	Yes	0	No	-1	Yes	0	-2
	Delhi School Education Rules, 1973 (Recognition)	Yes	Yes	0	No	-1	N/A	0	No	-1	No	-1	Yes	0	-3
	Delhi School Education Rules, 1973 (Permission to establish)	Yes	No	-1	No	-1	N/A	0	No	-1	No	-1	No	-1	-5
	Delhi Right of Children to Free and Compulsory Education Rules, 2011 (Recognition)	Yes	Yes	0	No	-1	N/A	0	No	-1	No	-1	No	-1	-4
Gujarat	Gujarat Secondary and Higher Secondary Education Act, 1972 (Recognition)	Yes	No	-1	Yes	0	No	-1	No	-1	No	-1	Yes	0	-4

States	Laws	Does the legislation confer upon the executive the authority to grant approval/for permission to establish?	Does the legislation define criteria/conditions for grant of approval?	Score	Does the legislation set a time limit for the grant of recognition?	Score	Is there a penalty/repercussions for not meeting the time limit?	Score	Does the legislation mandate the decision-making authority to provide reasons in writing for denial of recognition?	Score	Does the legislation mandate a pre-decisional hearing (or issuance of a show-cause notice) in the case of denial of approval?	Score	Does the legislation allow for appeal against the decision on denial of approval?	Score	Total score (Procedural safeguards)
	Gujarat Educational Institutions (Regulation) Act, 1984 (Recognition)	Yes	No	-1	Yes	0	No	-1	No	-1	No	Yes	0	-4	
	Gujarat Educational Institutions (Regulation) Act, 1984 (Permission to establish)	Yes	No	-1	No	-1	N/A	0	No	-1	No	No	-1	-5	
	Right of Children to Free and Compulsory Education Rules, 2012 (Gujarat)	Yes	Yes	0	Yes	0	No	-1	No	-1	No	Yes	0	-3	
Haryana	Haryana School Education Act, 1995 (Recognition)	Yes	Yes	0	Yes	0	No	-1	Yes	0	No	Yes	0	-2	
	Haryana School Education Rules, 2003 (Recognition)	Yes	Yes	0	No	-1	N/A	0	No	-1	No	Yes	0	-3	
	Haryana School Education Act, 1995 (Permission to establish)	Yes	No	-1	No	-1	N/A	0	No	-1	No	No	-1	-5	

States	Laws	Does the legislation confer upon the executive the authority to grant approval/ permission to establish?	Does the legislation define criteria/conditions for grant of approval?	Score	Does the legislation set a time limit for the grant of recognition?	Score	Is there a penalty/repercussions for not meeting the time limit?	Score	Does the legislation mandate the decision-making authority to provide reasons in writing for denial of recognition?	Score	Does the legislation mandate a pre-decisional hearing (or issuance of a show-cause notice) in the case of denial of approval?	Score	Does the legislation allow for appeal against the decision on denial of approval?	Score	Total score (Procedural safeguards)
	Haryana School Education Rules, 2003 (Permission to establish)	Yes	No	-1	Yes	0	Yes	0	No	-1	No	0	Yes	0	-3
	Haryana Right of Children to Free and Compulsory Education, 2011	Yes	Yes	0	Yes	0	No	-1	No	-1	No	-1	No	-1	-4
Jammu and Kashmir	Jammu and Kashmir School Education Act, 2002 (Recognition)	Yes	Yes	0	No	-1	N/A	0	Yes	0	No	-1	No	-1	-3
	Jammu and Kashmir School Education Rules, 2010 (Recognition)	Yes	Yes	0	Yes	0	No	-1	Yes	0	No	-1	No	-1	-3
	Jammu and Kashmir School Education Act, 2002 (Permission to establish)	Yes	No	-1	No	-1	N/A	0	No	-1	No	-1	No	-1	-5
	Jammu and Kashmir School Education Rules, 2010 (Permission to establish)	Yes	Yes	0	Yes	0	No	-1	Yes	0	No	-1	No	-1	-3

States	Laws	Does the legislation confer upon the executive the authority to grant approval/ permission to establish?	Does the legislation define criteria/conditions for grant of approval?	Score	Does the legislation set a time limit for the grant of recognition?	Score	Is there a penalty/repercussions for not meeting the time limit?	Score	Does the legislation mandate the decision-making authority to provide reasons in writing for denial of recognition?	Score	Does the legislation mandate a pre-decisional hearing (or issuance of a show-cause notice) in the case of denial of approval?	Score	Does the legislation allow for appeal against the decision on denial of approval?	Score	Total score (Procedural safeguards)
Jharkhand	Jharkhand Right of Children to Free and Compulsory Education Rules, 2011 (Recognition)	Yes	Yes	0	Yes	0	No	-1	No	-1	No	-1	No	-1	-4
Bihar	Bihar High Schools (Control and Regulation and Administration) Act, 1960 (Recognition)	Yes	No	-1	No	-1	N/A	0	No	-1	No	-1	Yes	0	-4
Kerala	Kerala Education Act, 1958 (Recognition)	Yes	No	-1	No	-1	N/A	0	No	-1	No	-1	Yes	0	-4
	Kerala Education Rules, 1959 (Recognition)	Yes	Yes	0	No	-1	N/A	0	No	-1	No	-1	Yes	0	-3
	Kerala Education Act, 1958 (Permission to establish)	Yes	No	-1	No	-1	N/A	0	No	-1	No	-1	Yes	0	-4
	Kerala Education Rules, 1959 (Permission to establish)	Yes	Yes	0	No	-1	N/A	0	No	-1	No	-1	Yes	0	-3
	Kerala Right Of Children To Free And Compulsory Education Rules 2010 (Recognition)	Yes	Yes	0	No	-1	N/A	0	No	-1	No	-1	No	-1	-4

States	Laws	Does the legislation confer upon the executive the authority to grant approval/ permission to establish?	Does the legislation define criteria/conditions for grant of approval?	Score	Does the legislation set a time limit for the grant of recognition?	Score	Is there a penalty/repercussions for not meeting the time limit?	Score	Does the legislation mandate the decision-making authority to provide reasons in writing for denial of recognition?	Score	Does the legislation mandate a pre-decisional hearing (or issuance of a show-cause notice) in the case of denial of approval?	Score	Does the legislation allow for appeal against the decision on approval?	Score	Total score (Procedural safeguards)
Maharashtra	Maharashtra Secondary and Higher Secondary Education Boards Act, 1965 (Recognition)	Yes	No	-1	No	-1	N/A	0	No	-1	No	0	Yes	0	-4
	Maharashtra Secondary and Higher Secondary														
	Education Boards Regulation, 1977 (Recognition)	Yes	Yes	0	No	-1	N/A	0	No	-1	No	-1	No	-1	-4
	Maharashtra Self-Financed Schools (Establishment and Regulation) Act, 2012 (Recognition)	Yes	No	-1	No	-1	N/A	0	No	-1	No	-1	No	-1	-5
	Maharashtra Self-Financed Schools (Establishment and Regulation) Act, 2012 (Permission to establish)	Yes	No	-1	No	-1	N/A	0	No	-1	No	-1	No	-1	-5
	Maharashtra Right of Children to Free and Compulsory Education Rules, 2011	Yes	Yes	0	Yes	0	No	-1	No	-1	No	-1	No	-1	-4

States	Laws	Does the legislation confer upon the executive the authority to grant approval/ permission to establish?	Does the legislation define criteria/conditions for grant of approval?	Score	Does the legislation set a time limit for the grant of recognition?	Score	Is there a penalty/repercussions for not meeting the time limit?	Score	Does the legislation mandate the decision-making authority to provide reasons in writing for denial of recognition?	Score	Does the legislation mandate a pre-decisional hearing (or issuance of a show-cause notice) in the case of denial of approval?	Score	Does the legislation allow for appeal against the decision on denial of approval?	Score	Total score (Procedural safeguards)
Nagaland	Nagaland Board of Secondary and Higher Secondary Education Act, 1973 (Recognition)	Yes	No	-1	No	-1	No	-1	N/A	0	No	-1	No	-1	-5
	Nagaland Right of Children to Free and Compulsory Education Rules, 2010 (Recognition)	Yes	Yes	0	Yes	0	Yes	0	No	-1	No	-1	No	-1	-4
Telangana	Telangana Education Act, 1982 (Recognition)	Yes	No	-1	No	-1	No	-1	Yes	0	No	-1	Yes	0	-4
	Telangana Education Act, 1982 (Permission to establish)	Yes	Yes	0	No	-1	N/A	0	No	-1	No	-1	No	-1	-4
Uttar Pradesh	Uttar Pradesh State Open School Board Act, 2008 (Recognition)	Yes	No	-1	No	-1	N/A	0	No	-1	No	-1	No	-1	-5
	Uttar Pradesh Right of Children to Free and Compulsory Education Rules, 2011 (Recognition)	Yes	Yes	0	Yes	0	No	-1	Yes	0	No	-1	No	-1	-4
West Bengal	West Bengal Board of Secondary Education Act, 1963 (Recognition)	Yes	No	-1	No	-1	N/A	0	No	-1	No	-1	No	-1	-5

States	Laws	Does the legislation confer upon the executive the authority to grant approval/ permission to establish?	Does the legislation define criteria/conditions for grant of approval?	Score	Does the legislation set a time limit for the grant of recognition?	Score	Is there a penalty/repercussions for not meeting the time limit?	Score	Does the legislation mandate the decision-making authority to provide reasons in writing for denial of recognition?	Score	Does the legislation mandate a pre-decisional hearing (or issuance of a show-cause notice) in the case of denial of approval?	Score	Does the legislation allow for appeal against the decision on denial of approval?	Score	Total score (Procedural safeguards)
	West Bengal Primary Education Act, 1973 (Recognition)	Yes	No	-1	No	-1	N/A	0	No	-1	No	-1	No	-1	-5
	West Bengal Council of Higher Secondary Education, 1975 (Recognition)	Yes	No	-1	No	-1	N/A	0	No	-1	No	-1	No	-1	-5
	West Bengal Right of Children to Free and Compulsory Education, 2012 (Recognition)	Yes	Yes	0	Yes	0	No	-1	No	-1	Yes	0	Yes	0	-2

SUBSTANTIVE SAFEGUARDS

States	Laws	Are there any arbitrary conditions laid down for the grant of approval?	Score	Are there any excessive conditions laid down for the grant of approval?	Score	Does the rule introduce any condition/criteria not mentioned in the parent Act? (Ultra vires)	Score	Does the legislation list any unclear conditions?	Score	Score (substantive safeguards)	Total Score (procedural and substantive safeguards)	Grand total (by state)
Andhra Pradesh	Andhra Pradesh Education Act, 1982 (Recognition)	N/A	0	N/A	0	N/A	0	N/A	0	0	-0.67	-4.33
	Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration and Control of Institutions of Higher Education) Rules, 1987 (Recognition)	No	0	No	0	No	0	No	0	0	-0.67	
	Andhra Pradesh Education Act, 1982 (Permission to establish)	Yes	-1	No	0	N/A	0	Yes	-1	2	-1.17	
	Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration and Control of Institutions of Higher Education) Rules, 1987 (Permission to establish)	Yes	-1	Yes	-1	No	0	No	0	-2	-1.17	
Delhi	Andhra Pradesh Right of Children to Free and Compulsory Education Rules, 2010 (Recognition)	No	0	No	0	No	0	No	0	0	-0.67	-2.83
	Delhi School Education Act, 1973 (Recognition)	No	-1	No	0	N/A	0	No	0	0	-0.33	
	Delhi School Education Rules, 1973 (Recognition)	Yes	-1	No	0	Yes	-1	No	0	-2	-1.00	
	Delhi School Education Rules, 1973 (Permission to establish)	N/A	-3	N/A	0	N/A	0	N/A	0	0	-0.83	

States	Laws	Are there any arbitrary conditions laid down for the grant of approval?	Score	Are there any excessive conditions laid down for the grant of approval?	Score	Does the rule introduce any condition/criteria not mentioned in the parent Act? (Ultra vires)	Score	Does the legislation list any unclear conditions?	Score	Score (substantive safeguards)	Total Score (procedural and substantive safeguards)	Grand total (by state)
	Delhi Right of Children to Free and Compulsory Education Rules, 2011 (Recognition)	No	0	No	0	No	0	No	0	0	-0.67	
Gujarat	Gujarat Secondary and Higher Secondary Education Act, 1972 (Recognition)	N/A	0	N/A	0	N/A	0	N/A	0	0	-0.67	-2.67
	Gujarat Educational Institutions (Regulation) Act, 1984 (Recognition)	N/A	0	N/A	-1	N/A	0	N/A	0	0	-0.67	
	Gujarat Educational Institutions (Regulation) Act, 1984 (Permission to establish)	N/A	0	N/A	-1	N/A	0	N/A	0	0	-0.83	
	Right of Children to Free and Compulsory Education Rules, 2012 (Gujarat)	No	0	No	0	No	0	N/A	0	0	-0.50	
Haryana	Haryana School Education Act, 1995 (Recognition)	No	0	No	0	N/A	0	No	0	0	-0.33	-2.83
Jharkhand	Haryana School Education Rules, 2003 (Recognition)	No	0	No	0	No	0	No	0	0	-0.50	-2.83
	Haryana School Education Act, 1995 (Permission to establish)	N/A	0	N/A	0	N/A	0	N/A	0	0	-0.83	
	Haryana School Education Rules, 2003 (Permission to establish)	N/A	0	N/A	0	N/A	0	N/A	0	0	-0.50	

States	Laws	Are there any arbitrary conditions laid down for the grant of approval?	Score	Are there any excessive conditions laid down for the grant of approval?	Score	Does the rule introduce any conditions/criteria not mentioned in the parent Act? (Ultra vires)	Score	Does the legislation list any unclear conditions?	Score	Score (substantive safeguards)	Total Score (procedural and substantive safeguards)	Grand total (by state)
Jammu and Kashmir	Haryana Right of Children to Free and Compulsory Education, 2011	No	0	No	0	No	0	No	0	0	-0.67	-4.00
	Jammu and Kashmir School Education Act, 2002 (Recognition)	N/A	0	N/A	0	N/A	0	N/A	0	0	-0.50	
	Jammu and Kashmir School Education Rules, 2010 (Recognition)	No	0	No	0	No	0	No	0	0	-0.50	
	Jammu and Kashmir School Education Act, 2002 (Permission to establish)	N/A	0	N/A	0	N/A	0	N/A	0	0	-0.83	
	Jammu and Kashmir School Education Rules, 2010 (Permission to establish)	No	0	No	0	No	0	No	0	0	-0.50	
Jharkhand	Jharkhand Right of Children to Free and Compulsory Education Rules, 2011 (Recognition)	No	0	No	0	No	0	No	0	0	-0.67	-3.17
	Bihar High Schools (Control and Regulation Administration) Act, 1960 (Recognition)	N/A	0	N/A	0	N/A	0	N/A	0	0	-0.67	
Kerala	Kerala Education Act, 1958 (Recognition)	N/A	0	N/A	0	N/A	0	N/A	0	0	-0.67	-4.00
	Kerala Education Rules, 1959 (Recognition)	Yes	-1	No	0	Yes	0	No	0	-2	-1.00	
	Kerala Education Act, 1958 (Permission to establish)	N/A	0	N/A	0	N/A	0	N/A	0	0	-0.67	

States	Laws	Are there any arbitrary conditions laid down for the grant of approval?	Score	Are there any excessive conditions laid down for the grant of approval?	Score	Does the rule introduce any condition/criteria not mentioned in the parent Act? (Ultra vires)	Score	Does the legislation list any unclear conditions?	Score	Score (substantive safeguards)	Total Score (procedural and substantive safeguards)	Grand total (by state)		
Maharashtra	Kerala Education Rules, 1959 (Permission to establish)	No	0	No	0	N/A	0	No	0	0	-0.50	-3.67		
	Kerala Right Of Children To Free And Compulsory Education Rules 2010 (Recognition)	Yes	-1	No	0	Yes	-1	No	-2	-1.17				
	Maharashtra Secondary and Higher Secondary Education Boards Act, 1965 (Recognition)	N/A	0	N/A	0	N/A	0	N/A	0	0	-0.67			
	Maharashtra Secondary and Higher Secondary Education Boards Regulation, 1977 (Recognition)	No	0	No	0	No	0	No	0	0	-0.67			
	Maharashtra Self-Financed Schools (Establishment and Regulation) Act, 2012 (Recognition)	N/A	0	N/A	0	N/A	0	N/A	0	0	-0.83			
	Maharashtra Self-Financed Schools (Establishment and Regulation) Act, 2012 (Permission to establish)	N/A	0	N/A	0	N/A	0	N/A	0	0	-0.83			
	Maharashtra Right of Children to Free and Compulsory Education Rules, 2011	No	0	No	0	No	0	No	0	0	-0.67			
	Nagaland Board of Secondary and Higher Secondary Education Act, 1973 (Recognition)	N/A	0	N/A	0	N/A	0	N/A	0	0	-0.83			
	Nagaland													-1.67

States	Laws	Are there any arbitrary conditions laid down for the grant of approval?	Score	Are there any excessive conditions laid down for the grant of approval?	Score	Does the rule introduce any condition/criteria not mentioned in the parent Act? (Ultra vires)	Score	Does the legislation list any unclear conditions?	Score	Score (substantive safeguards)	Total Score (procedural and substantive safeguards)	Grand total (by state)
	Nagaland Right of Children to Free and Compulsory Education Rules, 2010 (Recognition)	No	0	No	0	No	0	No	0	0	-0.67	
Telangana	Telangana Education Act, 1982 (Recognition)	N/A	0	N/A	0	N/A	0	N/A	0	0	-0.67	-1.58
	Telangana Education Act, 1982 (Permission to establish)	Yes	-1	No	0	N/A	0	No	0	-1	-0.92	
Uttar Pradesh	Uttar Pradesh State Open School Board Act, 2008 (Recognition)	N/A	0	N/A	0	N/A	0	N/A	0	0	-0.83	-2.33
	Uttar Pradesh Right of Children to Free and Compulsory Education Rules, 2011 (Recognition)	No	0	No	0	No	0	No	0	0	-0.67	
West Bengal	West Bengal Board of Secondary Education Act, 1963 (Recognition)	N/A	0	N/A	0	N/A	0	N/A	0	0	-0.83	-3.58
	West Bengal Primary Education Act, 1973 (Recognition)	N/A	0	N/A	0	N/A	0	N/A	0	0	0.83	
	West Bengal Council of Higher Secondary Education, 1975 (Recognition)	N/A	0	N/A	0	N/A	0	N/A	0	0	-0.83	
	West Bengal Right of Children to Free and Compulsory Education, 2012 (Recognition)	Yes	-1	Yes	-1	Yes	-1	No	0	-3	-1.08	

3. K-12 RULES HINDER FINANCING IN PRIVATE SCHOOLS

Most budget private schools are registered as Societies or Trusts. The law does not allow the schools to generate profit to expand or develop their offerings. The current non-profit architecture also relays a poor signal to investors looking to enter the K-12 sector.

Licensure, that is approvals, permissions and certifications, prevents individuals or enterprises from setting up enterprises except under conditions laid down by a constituted authority of the state (Friedman 1962).

In India, the RTE Act, 2009, does not define who can open a school, but state-level legislation restricts the kind of schools that can enter the K-12 market (Singh and Sudhakar 2020). After the RTE Act, 2009, was passed, state governments had to notify rules for the law that filled in details about how certain provisions laid in the RTE Act would play out. Under these RTE Rules, states also added conditions on ownership and registration structures for who could open a school, as highlighted earlier. But since there is no corresponding provision that allows state governments to define educational institutions in this manner, these clauses may be seen as ultra vires or outside the mandate of the law.

These rules had direct repercussions on the financing capabilities of private schools. In general, now private schools could only be registered as

1. Societies registered under the Societies Registration Act, 1860, or under state government acts for educational, religious or charitable societies
2. Registered Trusts or
3. Not-for-profit companies registered under Section 8 of the Companies Act, 2013, having education as one of its objects

Only Haryana RTE Rules allow for individuals or a group of individuals or companies registered under the Companies Act, 2013 (including companies registered under provisions other than Section 8), to set up schools (Singh and Sudhakar 2020).

Some state laws also define eligible educational entities and, in some cases, work around the

conditions under the state RTE Rules. Our analysis pinpointed Jammu and Kashmir, Andhra Pradesh, Telangana and Uttar Pradesh as special cases.

- **Jammu and Kashmir** was the only state that allowed an individual to set up a school under the Jammu and Kashmir School Education Act, 2002. A legal provision to allow schools to be run individually recognizes the reality of the private school sector and creates an opportunity for budget private schools to operate commercially without bearing the burden of heavier compliance requirements for other larger proprietary structures.
- **Andhra Pradesh and Telangana** also allow 'any body of persons' to operate as schools. This includes schools run by individuals.
- In **Uttar Pradesh**, the UP Self-Financed Independent Schools (Fee Regulation) Act, 2018, expanded its provisions to all private unaided schools that are affiliated to Boards including the International Baccalaureate (IB) and International General Certificate of Secondary Education (IGCSE). Boards such as IB and IGCSE allow schools to be run as companies under the affiliation norms. Since this Act is passed by the state legislature, its provisions supersede government rules, orders and notifications, including UP RTE Rules, as long as they are not inconsistent with the RTE Act.¹⁰

Most schools across states can only be registered as Societies, Trusts, or under Section 8 of the Companies Act, 2013; they cannot run for profit. Arguments against profit-making in K-12 education often posit that profit-making of private schools leads to commercialization of education and exploitation of parents. Moreover, research questions the quality of education, access and equity offered by these for-profit schools (Riep 2014; Education International & Kenya National Union of Teachers 2016).

But the not-for-profit mandate leads to two critical issues:

1. Lack of innovation and adverse selection

Schools have to meet difficult land norms while operating as non-for-profit entities. For instance, under the Central Board for Secondary Education

¹⁰ The UP Self-Financed Independent Schools (Fee Regulation) Act, 2018 also has an overriding clause (Section 15) that voids 'any law, rules, regulation or notification already made by the Government' that are inconsistent with its provisions.

affiliation by-laws, schools need to have 8,000 m² of land,¹¹ a 'proper' playground and an athletic track.¹² Such a high compliance cost raises entry barriers for private schools and budget private schools that operate on small margins. In 2009 before the RTE Act was passed, setting up a school already cost crores due to land procurement (TOI [2009](#)).

These entry barriers are a critical problem to address because most schools cannot raise the necessary capital to meet the existing requirements. The National Education Policy 2020 requires the not-for-profit requirement to continue for school education in India. Although it acknowledges that the current regulatory regime has 'often inadvertently discouraged public-spirited private/philanthropic schools', this mandate for schools to operate as non-profit trusts or societies can pose barriers to access to credit or investment (Sampradaan Centre 2004). Budget private schools are profit-making entities off the paper. Earning profit is not a concern because it encourages new players to enter the market (Tooley [2007](#)). But the current system does not allow private schools to raise capital from legitimate sources and develop their offering to students. Herrendrof and Teixeira ([2011](#)) argue that such barriers give a monopoly to groups who would lose their economic rent if better technologies are adopted.

One such hurdle is evident in accessing foreign investments. Schools registered as Societies or Trusts are not eligible to receive foreign direct investments in India due to exchange control regulations. Even if a school is set up as a Section 8 company, it has to seek prior permission from the Ministry of Home Affairs. This process can be long drawn (Gupta [2020](#)). These schools are also subject to provisions of the Foreign Contribution (Regulation) Act, [2010](#).

During the COVID-19 pandemic, several private schools could not maintain their reserves and had no option but to shut down (Kalra [2020](#)). If they could register as enterprises, private schools, particularly budget private schools catering to low-income populations, would have been able to access bridge financing and avoid closure. From our survey, we documented a sharp rise in the default rate for fee collection from the academic year of 2019/20 to 2020/21. Before the pandemic, most schools would

face a default rate of 21%–40%. Further, 22.6% of schools in Haryana responded that 21%–30% of parents defaulted on fees. Also, 23.5% of schools in Andhra Pradesh reported that 31%–40% of parents were defaulters. Similarly, 13.6% of schools in Jammu and Kashmir and 25.1% of schools in Telangana had 31%–40% of defaulting parents.

But after the spread of COVID-19 and its consequent lockdowns, nearly all schools across the five states struggled with fee collection. In Assam, 46.7% of schools reported that 31%–40% of parents defaulted on their payments. Moreover, 25.3% of schools in Haryana reported that 81%–90% of parents failed to pay fees. Similarly, in Telangana, 18.4% of schools had more than a 90% of fee default rate. When asked how schools maintained their operations, the owners reported that

'We had to reduce staff, we have also reduced our own personal expenditure to ensure sustainability.'

'We conducted regular staff meetings. Our first step was to make staff understand that they would not get paid immediately. We also poured our own money into this.'

This not only hinders innovation and diversity in the sector but also encourages adverse selection. Only players who are able to navigate through the cumbersome regulatory framework end up opening schools. These players generally enter the sector through corrupt practices to make hidden profits and then leave no room for good players (Akerlof 1970). The [mid-term](#) appraisal of the 11th Five-Year Plan also highlighted this issue arguing that 'private sector resources should be leveraged to improve infrastructure and quality'.

2. Missing accountability in existing governance structures

Most private schools have to operate as non-profit entities and register either as a Society or a Trust. Both these ownership structures do not have good models for governance. For instance, after gaining their initial registration, trusts generally operate without any oversight. There is also no stipulated time limit for the registration process or automatic

11 In some exceptions, the minimum land requirement may be 4,000 m² or lower.

12 Affiliation refers to the official association of an academic organization with another institution, specifically to influence academic policies, standards or programs. The RTE Act, 2009, does not mandate primary and upper primary schools to be affiliated to a Board. However, state laws, such as Delhi School Education Act, 1973, and Haryana School Education Act, 1995, require higher secondary schools to be affiliated to a board for the purposes of any public examination. Usually, Board affiliations tend to go beyond examinations. Schools have to meet certain requirements including infrastructure, management structure and fees. Boards only grant affiliation to institutions that completely fulfil their requirements. Schools may lose their status as a result of non-compliance with norms.

approval in the case of delay (Sampradaan [2004](#)).

Corporate governance structures also allow for greater transparency. Private schools that opt to register as Companies are held to financial and administrative standards under the Companies Act, [2013](#). The Act requires all companies to maintain their accounts and financial statements for every year, including those with branches outside India, and file direct and indirect tax returns. These documents may be inspected at any time during working hours and can come under the scrutiny of the Central Government, income tax authorities and the Securities and Exchange Board. Such level of financial disclosures and accountability is not present at all in the regulation of societies and trusts. At best, the Indian Trusts Act, [1882](#), requires a trustee to keep 'clear and accurate accounts of the trust' and give beneficiaries 'full and accurate information' on the amount and state of the trust-property at all reasonable times. The Societies Registration Act, [1860](#), has no such requirement.

Arguments against schools earning profit hold little weight. Tilak ([2011](#)) posited that 25% reservation of seats under the RTE Act would help private schools profit because the government should reimburse the costs of providing these seats. But as per the law, private schools can only be reimbursed the amount equivalent to the actual amount charged by schools or the per-child expenditure incurred by the government, whichever is less. If tuition fees for schools are higher than government expenditure, schools will not be earning a profit, let alone break even. In many cases, schools are not even reimbursed. Reimbursements for more than INR 3.11 lakh students in 12 states were not approved in 2019/20 (CSF 2020). Bennett, Lucchesi and Vedder ([2010](#)) also argued that allowing schools to run for-profit would improve the overall quality of education provided to students. One of the main arguments against for-profit schools was that they would provide low-quality education at high costs to profit in the short run. But profits are an incentive to provide instruction of what is in demand. Parents will pay only if students receive a good product in the form of education and if the benefits that they derive outweigh the costs. Schools, therefore, will need to constantly evolve and improve their offering.

For-profit schooling is legally permitted across the developing world and in many developed countries such as the USA, China, Japan, Germany, UK, Brazil,

Canada, Sweden, South Korea, Singapore, Hong Kong, Thailand, Vietnam, Indonesia, Dubai, Abu Dhabi, Qatar, Oman, South Africa, Egypt, Kenya, Morocco and Uganda (EY Parthenon 2019).

Fee regulatory measures in India further create obstacles in the operations of budget private schools, reduce investments and encourage collusion

For both K-12 and higher education, the following two court judgements regulate the ability of educational institutions to run commercially.

For both K-12 and higher education, the following two court judgements regulate the ability of educational institutions to run commercially.

- [Unnikrishnan, J.P. v. State of Andhra Pradesh, 1993](#): The Supreme Court of India recognised education as a 'symbol of charity' and banned educational institutions from 'profiteering'.
- [T.M.A Pai v. State of Karnataka, 2002](#): The Supreme Court of India directed that educational institutions could earn a 'reasonable surplus' but banned profiteering and charging capitation fees. It argued that 'reasonable surplus' for meeting expansion cost and developing facilities did not amount to profiteering.

This restriction on commercial investment in the schooling sector has a negative impact on innovation and diversity. School systems can benefit from allowing unaided private schools to operate freely, potentially contributing to increase in efficiency and productivity (World Bank [2014](#)). For-profit schooling is legally permitted across the world such as the USA, China, Japan, Germany, UK, Brazil, Canada, Sweden, South Korea, Singapore, Hong Kong, Thailand, Vietnam, Indonesia, Dubai, Abu Dhabi, Qatar, Oman, South Africa, Egypt, Kenya, Morocco and Uganda (EY Parthenon 2019).

In addition to these court judgements, 7 of the 12 states we studied in India have stand-alone acts regulating the collection of fees in private schools. These acts were passed between 2009 and 2019 and mandate a Fee Regulatory Committee to hear fee-related complaints and proposals. Three states also have acts prohibiting capitation fees.¹³ Most states employ one of the three measures to regulate fees: percentage-based price caps; upper

¹³ Andhra Pradesh Educational Institutions (Regulation of Admissions and Prohibition of Capitation Fee) Act, 1983; Maharashtra Educational Institutions (Prohibition of Capitation Fee) Act, 1987; Telangana Educational Institutions (Regulation of Admission and Prohibition of

limits beyond which fees will be regulated; and mandate school management to gain approval from school-level committees constituted of parents, teachers and management.

Table 4.2:

States	Acts	Rules	Scope of regulation	
			Framework	Formula in the case of school fees
Delhi	- Delhi School Education Act, 1973	-	- Income derived by unaided schools through fees shall be utilized only for such educational purposes as may be prescribed	- Hike to be less than 10% of previous year's fees
Gujarat	- Gujarat Self-financed Schools (Regulation of Fees) Act, 2017	-	- Fee Regulatory Committee shall determine fees payable by students in self-financed schools	- Schools charging beyond prescribed amounts need to obtain approval
Haryana	- Haryana School Education Act, 1995	- Haryana School Education Rules 2003	- School shall submit fees for the academic year to the State Department of Education	-
Jammu and Kashmir	- Jammu and Kashmir School Education Act, 2002	-	- Committee for Fixation and Regulation of Fee of Private Schools shall fix the maximum ceiling of the fee to be charged under various categories	-
Jharkhand	- Jharkhand Education Tribunal Act, 2007	-	- Executive Committee will approve fees proposed by the management of the school	- If the increase in fee decided by the committee is more than 10% over the fee of the previous year, the matter shall be referred to the District Committee for its approval
Maharashtra	- Maharashtra Educational Institutions (Regulation of Fee) Act, 2011	-	- Executive Committee will approve fees proposed by the management of the school	-
Uttar Pradesh	- UP Self-Financed Independent Schools (Fee Regulation) Act, 2018	-	- District fee regulatory committees	- Consumer Price Index + 5% of last-year fees

Capitation Fee) Act, 1983; Capitation fee is any amount, cash or kind, higher than the approved fees generally charged during admission cycles.

Apart from Haryana and Maharashtra, all states have provided caps on fee hikes. Such an approach to fee regulation distorts demand–supply balance and hinders the market from rationing resources efficiently. Price caps prevent mutually beneficial exchanges, which would have occurred otherwise (Coyne and Coyne 2015). These have the following effects on the sector:

1. Fee regulation changes the ‘decision-making calculus’ of entrepreneurs

By laying down a ‘formula’, the government encourages schools to raise fees to the fullest extent possible and reduce price differentiation (Knittel and Stango 2003). School owners begin to see the government as protection from the harsh realities of competitive markets and seek regulations in place of market competition (Grayson 1974). This weakens the incentive for schools to respond to parental demands and reduces the diversity of offerings.

2. Fee regulatory mechanisms such as fee caps or formulae are ambiguous and lead to procedural lapses

In Uttar Pradesh, for instance, an increase in fees has to be less than the ‘latest available yearly percentage increase’ in the Consumer Price Index (CPI) + 5% of fees. The Act neither defines CPI nor explains how to calculate the yearly percentage increase. In India, the Labour Bureau and the Ministry of Statistics publish five types of CPIs monthly. Given this ambiguity, district fee regulatory committees (DFRCs) have set different values for maximum fee hike (Anand and Roy 2020).

There is also evidence of procedural lapses in operations. In UP, Gautam Buddha Nagar DFRC issued orders to all schools and penalized those that failed to comply. A DFRC does not have the mandate to issue such orders and is only allowed to penalize parties on complaints raised by students or parents. Similarly, in Delhi, all districts are supposed to set up Fee Anomaly Committees. But these are either not constituted or defunct (Agarwal et al. 2019).

Overall, the current non-profit mandate and fee regulatory architecture discourages investments in the sector.

Caps on fee hikes make it difficult for private schools to match revenue with costs. They also reduce the

incentive to innovate (Ross 1983). In the absence of any price regulation, a school would choose an optimal level of quantity and quality that maximizes returns and keeps it competitive. With fee caps, schools have to trade off between the two. Either they decrease the quality of education they are imparting (less qualified teachers and greater pupil-to-teacher ratios) or they decrease seats available for admission (Murphy 1980; Cameron 2014). Profit motivates entrepreneurs to innovate, experiment with quality and price and attempt new ventures. This, in turn, stimulates efficiency and economic growth and benefits society as a whole (Dixon 2004).

States	Type of schools allowed to run
Andhra Pradesh	Under the state RTE Rules: <ul style="list-style-type: none"> • Societies • Trusts • Not-for-profit company Under Andhra Pradesh Education Act, 1982: <ul style="list-style-type: none"> • Any body of persons
Delhi	Under DSEAR 1973 and state RTE Rules: <ul style="list-style-type: none"> • Societies • Trusts • Not-for-profit company
Gujarat	Under state RTE Rules: <ul style="list-style-type: none"> • Societies • Trusts • Section 25 (now Section 8) Companies • Not-for-profit company
Haryana	Under state RTE Rules: <ul style="list-style-type: none"> • Societies • Trusts • Any company
Jammu and Kashmir	Under Jammu and Kashmir School Education Act, 2002: <ul style="list-style-type: none"> • Any individual • Societies • Trusts • Any body of persons
Jharkhand	Under state RTE Rules: <ul style="list-style-type: none"> • Societies • Trusts • Not-for-profit company

Kerala	Under state RTE Rules: <ul style="list-style-type: none"> • Societies • Trusts • Educational agency constituted under any law • Not-for-profit company • Compliant with Kerala Education Act
Maharashtra	Under state RTE Rules: <ul style="list-style-type: none"> • Societies • Trusts • Not-for-profit company Under Maharashtra Self-Financed Schools Act, 2012: <ul style="list-style-type: none"> • Section 8 companies (not run for profit)
Nagaland	Under state RTE Rules: <ul style="list-style-type: none"> • Societies • Trusts • Not-for-profit company
Telangana	Under Telangana Education Act, 1982: <ul style="list-style-type: none"> • Any body of persons
Uttar Pradesh	Under state RTE Rules: <ul style="list-style-type: none"> • Societies • Trusts • Not-for-profit company Under UP Fee Regulation Act, 2018: <ul style="list-style-type: none"> • Schools affiliated to Boards
West Bengal	Under state RTE Rules: <ul style="list-style-type: none"> • Societies • Trusts • Not-for-profit company • Not run for profit

facilities, Andhra Pradesh, Delhi, Gujarat and Telangana lay down an ‘essentiality’ or an ‘educational need’ condition as part of these rules.

In Delhi, for instance, schools have to prove their ‘essentiality’ to the state government. This requirement only emerges in Delhi School Education Rules 1973 and is not present in the Act. Commonly called the ‘Essentiality Certificate’, this certification requires all school owners to intimate the Administrator of their intention to establish a school. This is regardless of their recognition status. But what constitutes the requirements remains unclear and open to interpretation. As per the Rules 1973, the Administrator ‘may ... inform the person ... whether opening of the proposed new school would be, in the public interests’.

What does public interest mean here? There is no given definition of public interest in the law. But as per Rule 44(3) of the Delhi School Education Rules 1973,

‘the Administrator shall, if he is of opinion that the number of schools existing in the Zone where the new school is proposed to be open is sufficient to meet the needs of the Zone, inform the person ... that the opening of the new school in such Zone would be against the public interest ...’

In addition, a government notification in 2000 ¹⁴ laid down that schools up to Grade V did not need the Essentiality Certificate. For schools beyond this grade-level, district authorities ‘shall specifically state whether the school serves a real need of the locality and also whether it is likely to adversely affect the enrollment in a nearby school which has already been recognized by the appropriate authority’. It is not clear how the government authorities assess these parameters.

While other states may not require a separate certification to prove essentiality, they do impose similar conditions on schools. For instance, in Andhra Pradesh and Telangana, school owners need to prove a ‘need for providing educational facilities to people in the locality’. In Delhi, this provision came about to enable the state Department of Education to assess the requirement of schools in a particular zone as the Delhi Development Authority (DDA) allotted land to schools for operating. But this provision is no longer active, and school owners do not need to take land from the DDA or other

4. K-12 LAWS REQUIRE PRIVATE SCHOOLS TO ESTABLISH ‘NEED’ BEFORE SETTING UP

State-level education legislation mandates schools to obtain permission to establish before granting recognition. This often requires schools to prove need or their essentiality to the locality; what makes a school essential is not clear.

Of the states that have the provision for this permission for establishing or upgrading school

¹⁴ No. F.SRC/H.Q./1999–2000/1854-95, dt. 12.9.2000

government agencies.

For Delhi, this Essentiality Certificate has been recommended for deletion, recognizing its anti-competitive nature and restriction on the supply of private schools. As per the Shailaja Chandra Committee, GNCTD [2012](#):

'By restricting the supply of schools in an area, the Directorate restricts the role of the market in assessing the demand for school education. Within 3 years of obtaining the certificate, the construction of the school has to commence, failing which the society has to apply for renewal. Even after issue of Essentiality Certificate under Rule 44, the society has to again apply for recognition of its school under Rule 49 of the DSEAR '73. There is no such provision under the RTE '09; it stipulates that no school shall run without recognition. Therefore, in the opinion of the Review Committee, the provision of Essentiality Certificate contained in Rule 44 may be deleted, and it should be left open to the market to decide the requirement of schools in a particular area.'

But this recommendation is yet to be implemented. Until then, the government has the right to decide whether a school is essential to a locality and what determines essentiality. This level of executive discretion without any guidance leads to excesses committed by the bureaucracy. One clear example is the amount of time an application can take to be approved. In Delhi, it can take up to 14 months to obtain this Essentiality Certificate (Pavitra K and Sood 2019). This certification is also an anti-competitive measure that protects existing schools and prevents new players from entering the market (CCS 2019).¹⁵ Oxfam (2020) argues that this helps retain the 'monopoly of the early private providers'. Yet, this provision takes into account all schools in the neighbourhood, including government schools, and is executed by the government. While it still goes against the principle of providing choice to consumers, the requirement to prove 'need' clearly extends the government's grip over private players while allowing government schools to be set up with far less restrictions.

5. K-12 CERTIFICATIONS CREATE SPACE FOR CORRUPTION AND RED-TAPISM

Budget private schools raise concerns regarding rent-seeking while trying to obtain no-objection certifications such as Fire Safety.

State departments require private schools to obtain no-objection certificates for various purposes. We came across the following requirements for the five surveyed states that were difficult to obtain. While these certifications are important to ensure safety on school premises, we need to revisit the process of obtaining these approvals to understand how to make it more transparent and smoother for all parties involved.

State	Certificate	Purpose
Assam	Trade Licence	Collect tax on trade or commerce within the city corporation limits
Andhra Pradesh	Fire Safety	Ensure schools have the necessary equipment and infrastructure in the case of a fire and access to fire-fighting facilities such as 30% of total space reserved for parking
	Traffic	Ensure no obstructions to the movement of traffic
Haryana	Fire Safety	Ensure schools have the necessary equipment and infrastructure in the case of a fire and access to fire-fighting facilities

¹⁵ The Essentiality Certificate does not have a statutory basis in DSEA 1973 or in the Right of Children to Free and Compulsory Education (RTE) Act, 2009. It is only mentioned in DSEAR 1973.

Jammu and Kashmir	Fire Safety	Ensure schools have the necessary equipment and infrastructure in the case of a fire and access to fire-fighting facilities
	Traffic	Ensure no obstructions to the movement of traffic
	Chemical Lab Safety	Ensure schools have followed safety measures for school laboratories
Telangana	Fire Safety	Ensure schools have the necessary equipment and infrastructure in the case of a fire and access to fire-fighting facilities such as 30% of total space reserved for parking

In Haryana, budget private schools also struggle with no-objection certificates, particularly Fire Safety. Schools need to obtain a Fire Safety certification from the Fire Officer or agency authorized by the Union or state government. From our interviews with school owners and state heads, we learnt that budget private schools were situated in areas where it was difficult to comply with the Fire Safety norms. For instance, fire trucks cannot enter the lane where the school is situated due to its narrow width. This certification also creates problems for schools in Andhra Pradesh. One Andhra Pradesh school owner from our interviews reported that the recent Fire Safety certification cost around INR 2 lakhs officially and required more money unofficially. In Jammu and Kashmir, schools need to obtain similar no-objection certificates from the Fire and Emergency Department. Such regulatory requirements do not acknowledge the reality of budget private schools and increase uncertainty for school operations. School owners raised their concern that these rules were imposed retrospectively and were difficult for schools to meet once the building was constructed.

Andhra Pradesh: 'The standards set for the schools located in urban and rural areas are the same. This leads to a burden for both the regions, since the possibilities drastically differ for each region. The grounds can be met in rural areas where land is available, but not possible in urban areas. Fire requirements make sense in urban areas. In rural areas, the schools are in open places and only on the ground floor mostly.'

Schools have to acquire these from departments other than the State Department of Education. Apart from struggling with costs, schools have to grapple with delays in obtaining certifications and the subsequent delay in the entire recognition cycle.

Telangana: 'NOCs are not very practical to gain, especially in cities such as Hyderabad. Slum areas do not have building permissions, space, etc. How do we provide a parking area? When the purpose of the school is to impart education, why are they focusing so much on the rules and regulations? They should focus more on education and not infrastructure.'

Jammu and Kashmir: 'The main hurdle is the NOCs. We have NOCs from different departments which is time consuming. Every year they keep bringing in new NOCs, sometimes from the municipality, traffic department, and environment.'

Fire NOC, National Building Code. 90% of the schools in Hyderabad are not able to get all the permissions. Buildings that were constructed before the 2009 SC order on fire NOC did not require an NOC. NOC was only required for buildings with cooking equipment etc. India is a developing country; we can't follow norms like the developed countries. The system should be changed and made more practical. Regulations should concentrate on whether good education is being imparted to the students or not. Rules

'The recognition process wastes a lot of time; most of the formalities are unnecessary like chemical safety. They should just have one-time recognition and then can conduct inspections. They should make the process easy and uncomplicated. Many schools have to wait for four to five years to get recognition as their files are stuck.'

are being pushed on us retroactively. Schools built 30 years ago are not able to catch up with the rules created 10 years ago. Even the collector office does not have a 30 percent parking area. How can we provide it?

Schools in Jammu and Kashmir also raised problems in the time spent on obtaining other certifications such as the Chemical Lab Safety Certificate from Sub-Divisional Magistrate, the School Building Safety Certificate from the Public Welfare Department and other approvals from the local body and the Traffic Police. Schools mentioned that their files were stuck for at least one to two years for approval. Apart from paying official and unofficial money on certification, schools need to constantly renew no-objection certifications that they have already obtained due to this time-consuming process. There was a similar situation in Delhi where school recognition was pending for nearly five years. Part of the reason was that the validity of inspection reports and certifications such as Water Test Report and Fire Safety would expire. As per the Delhi School Education Act and Rules 1973, this certification should be granted within four months of applying (CCS 2019).

In Haryana and Andhra Pradesh, schools once recognized need to renew their certification after a certain period. For instance, as per the Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration and Control of Schools under Private Managements) Rules 1993, recognition would be valid for 10 years. In addition, by the end of April every year, the educational agency shall file an affidavit to the effect that 'there is no deviation or violation of norms/rules prescribed by the Government from time to time'. In Haryana, private schools affiliated to any Board as per the Haryana School Education Rules 2003 need to renew recognition every 10 years. In both states, however, schools reported that this rule had changed suddenly and schools needed to apply for a renewal every three to five years. Schools in Jammu and Kashmir also need to obtain a renewal after three to five years.¹⁶

6. K-12 LAY DOWN PRESCRIPTIVE QUALITY CHECKS WITHOUT ACCOUNTING FOR STATE CAPACITY

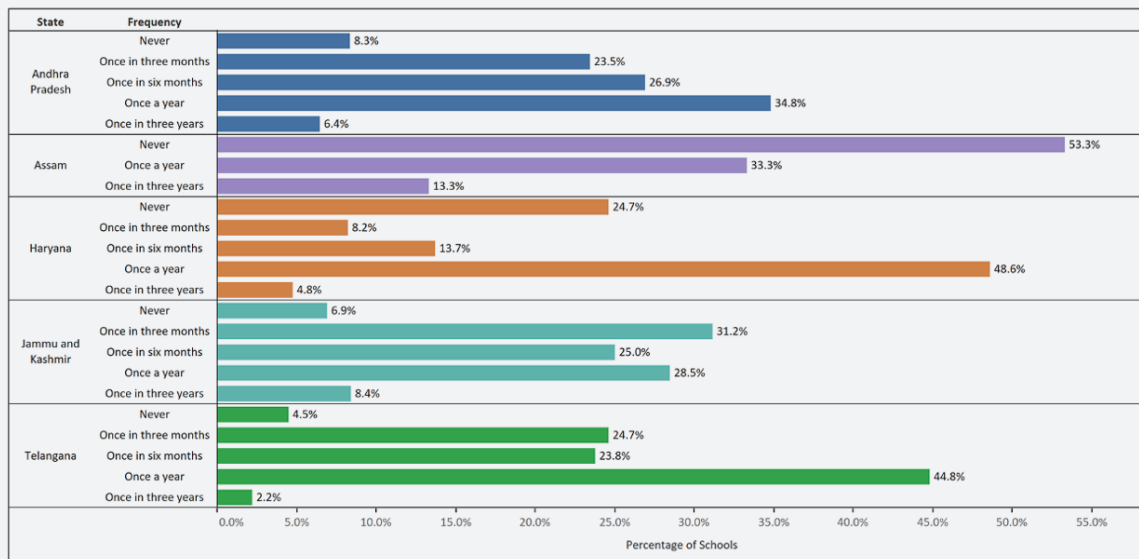
Inspections for private schools do not happen as per the law due to limited State capacity or assess schools on objective parameters related to learning outcomes.

Inspections are vital for overseeing the quality of education and understanding children's learning outcomes long before the key-stage examinations take place (Shailaja Chandra Committee Report 2012). If done correctly, they can incentivize schools to be transparent, accountable and answerable. But, if misused, it can increase the cost of running these schools without aiding any improvement (CCS 2019). While most state laws have given space for the executive to define and conduct inspections, only Delhi and Haryana lay down provisions in the parent Acts.

In the Delhi School Education Act and Rules 1973 and the Haryana School Education Act, 1995, every recognized school is supposed to be inspected at least once in each financial year. The Director may give directions to the manager to rectify any defect or deficiency found at the time of inspections or otherwise in the working of the school. But if the manager fails to comply with any direction given, the Director may take action as he may think fit, including stoppage of aid and withdrawal of recognition, after considering the explanation or report if any given or made by the manager. No detailed inspection criteria are laid down in the law. In reality, the Directorate randomly inspects only 60 schools annually, given limited State capacity (CCS 2019).

¹⁶ This is based on survey interviews. We were unable to find a consistent reference in the state legislation.

Figure 4.1:
Physical Inspection of Schools by Officials



When we asked how frequently government officials physically inspected schools, 50.4% of schools in Andhra Pradesh, 21.9% of schools in Haryana, 56.2% of schools in Jammu and Kashmir and 48.5% of schools in Telangana responded that they were inspected once in three to six months.

Further, 34.8% of schools in Andhra Pradesh were inspected once a year. Similarly, 33.3% of schools in Assam, 48.6% in Haryana, 28.5% of schools in Jammu and Kashmir and 44.8% of schools in Telangana had been inspected once a year. Also, 31.3% of schools in Jammu and Kashmir were inspected once in three years.

Moreover, 24.7% of schools in Haryana reported that they had never been inspected by officials. Also, 4.5% of schools in Telangana, 6.9% of schools in Jammu and Kashmir and 8.3% of schools in Andhra Pradesh replied the same. Further, 53.3% of schools in Assam responded that they had never been inspected, but this was highly attributable to their unrecognized status.

This sparse emphasis on inspections and check on quality is a systemic issue. In an Accountability Initiative (2020) study on how state governments directed education finances, the proportion dedicated towards 'Quality' initiatives ranged between 1% and 3%. Similarly, 'Monitoring and Inspection' of schools also ranged between less than 1% and 3%. This raises the question whether

inspections, as structured presently, are desirable.

As per a 2019 CCS study, school owners would like inspections to aid the improvement of schools. All school owners in the study believed that inspections, as they were being carried out, did not fulfil that function. Instead, inspections were conducted as fault-finding exercises, where an atmosphere of stress and panic was created in a school.

Questions asked during the inspection process also tend to be devoid of objectivity. In Delhi, one of the questions in the inspection pro forma was 'Were the questions put to the students thought-provoking and well-distributed?' Other subjective indicators used in the form to evaluate academic quality included 'love for the subject', 'love for reading' and 'gifted children'. These constructs are not valid or reliable. Instead, they impose a high reliance on the judgement of the inspectors without guidance, placing inordinate power in the hands of inspectors (CCS 2019).

7. K-12 LAWS DO NOT GIVE PRIVATE SCHOOLS AUTONOMY OVER EMPLOYING STAFF, PARTICULARLY TEACHERS

Budget private schools do not have the autonomy over hiring and firing teachers. In some states,

they also have to pay their teachers at par with government school teachers who earn at least twice as much as their counterparts.

Employment of school staff, in particular, teachers, is regulated on several fronts: minimum qualifications, hiring, pupil–teacher ratio, firing. The RTE Act, state RTE Rules and other state legislation govern these parameters.

Section 23(1) of the RTE Act requires teachers to meet minimum qualifications as set by the National Council for Teacher Education. State governments

may also regulate minimum qualifications for recruitment, duties, pay and other conditions as per the mandate of the RTE Act, 2009. Of the states we studied, Maharashtra is the only one that has a separate Act governing employees of private schools and lays down the standard for teachers at different levels such as graduate teachers for secondary schools and Junior Colleges or full-time teachers for Junior Colleges. Minimum qualifications for other states as per their RTE Rules are the same as those notified by the National Council for Teacher Education.

Box 4.1:

Minimum qualifications for teachers under Section 23(1) of the Right to Education Act, 2009, laid down by the National Council for Teacher Education (NCTE)

Grades I-V

Part A

1. Senior Secondary with at least 50% marks and two-year [diploma in Elementary Education] or
2. Senior Secondary with at least 45% marks and two-year [diploma in Elementary Education], in accordance with the NCTE (Recognition Norms and Procedure), Regulations 2002 or
3. Senior Secondary with at least 50% marks and four-year Bachelor of Elementary Education (B.El. Ed.) or
4. Senior Secondary (or its equivalent) with at least 50% marks and two-year Diploma in Education (Special Education); and

Part B: Pass in the Teacher Eligibility Test (TET) to be conducted by the appropriate Government following the Guidelines framed by the NCTE for this purpose.

Grades V-VIII

Part A

1. B.A./B.Sc. and two-year Diploma in Elementary Education (by whatever name known) OR
2. B.A./B.Sc. with at least at 50% marks and one-year Bachelor in Education (B. Ed) OR
3. B.A./B.Sc. with at least 45% marks and one -year Bachelor in Education (B. Ed), following the NCTE (Recognition Norms and Procedure), Regulations 2002 OR Senior Secondary (or its equivalent) with at least 50% marks and four-year Bachelor of Elementary Education (B.El. Ed.) OR
4. Senior Secondary (or its equivalent) with at least 50% marks and four-year B.A./B.Sc. Ed or B.A. Ed./BSC. Ed OR B.A./B.Sc. with at least 50% marks and one-year B.Ed (Special Education)

Part B: Pass in the TET to be conducted by the appropriate Government following the Guidelines framed by the NCTE for this purpose.

Such entry requirements are generally established to maintain the quality of professionals and signal competence. These requirements are supposed to act as a check against 'illegitimate' candidates (Hammond 1997). For example, the TET aims to ensure a national standard for teacher quality and encourage teacher education institutions to improve their performance (National Council of Teacher Education 2011). But numerous studies have indicated that teacher qualification levels and licensure test scores are 'unrelated to teacher performance'. Also no correlation was reported between teacher licensure scores and student test scores (Buddin and Zamarro 2009). Even teacher education in India contains little material on how to actually teach students. Instead, courses focus on building familiarity with different subject matters such as Sociology or Political Science (Muralidharan 2020). Minimum qualifications also limit competition to benefit a few and artificially inflate professional wages (Gupta, Rajesh, and Narang 2020).

Budget private schools struggle to hire fully qualified teachers as mandated by the RTE Act.

Further, 64.6% of schools in Jammu and Kashmir also reported that they had fully qualified teachers as per government requirements. But only 20.2% of schools in Telangana, 39.8% in Andhra Pradesh and 42.5% in Haryana responded the same. Also, 43% of Telangana schools mentioned more than 80% of their teachers were fully qualified. As per U-DISE 2018-19 data, only 4% of primary and upper

primary teachers in government schools had no professional qualifications.

Haryana: 'You only get students if you are offering good-quality services. There is a lot of competition in this field. There are too many recognition requirements. What will they do with the teacher details when these jobs are not permanent? They say BED teachers are compulsory, but there are very few people who have done the BED course. Then how can we find them? This is leading to fake certificates. Budget private schools should have different norms as compared to big corporate schools.'

Interestingly, Jammu and Kashmir is the only state that allows all private schools to 'frame and notify their own terms and conditions of service' for both teaching and non-teaching staff. This included conditions related to pay, gratuity, provident fund and age of retirement. Haryana requires the managing committee of every school to enter into a written contract of service with every employee of the school. There are no other restrictions on how schools should determine their terms and conditions of employment.

When it comes to teachers, most budget private schools in Jammu and Kashmir and Haryana do not have any teachers employed part-time. This can again be attributed to the high degree of autonomy on teacher hiring for schools in these states in which 46.7% of schools in Assam, 30.3% in Andhra

Figure 4.2:
Average Fees vs. Part-Time Teachers

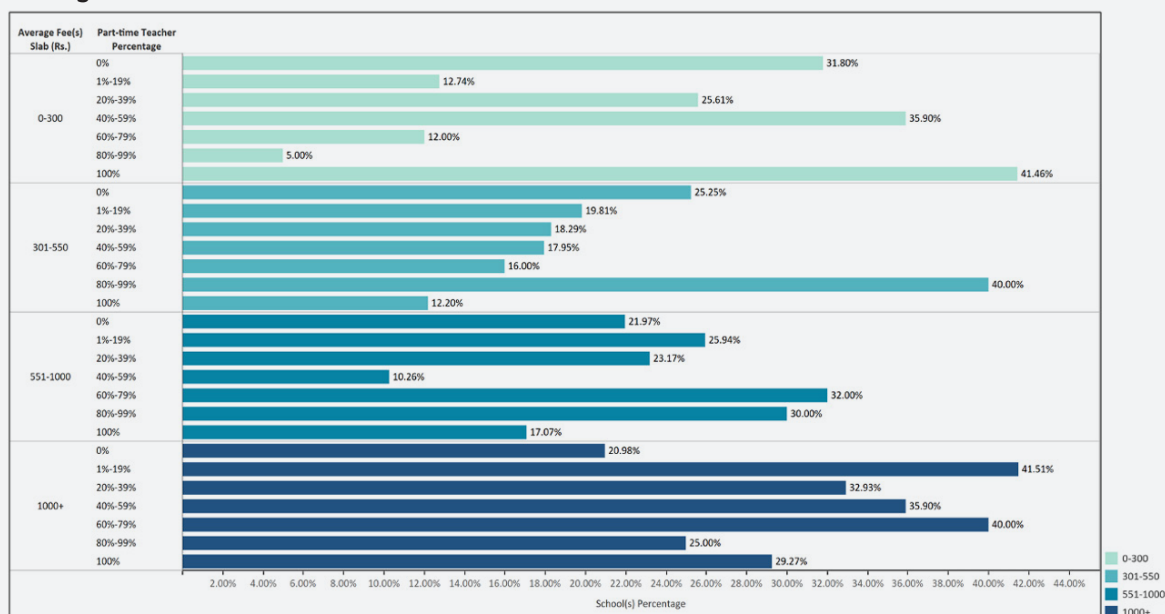
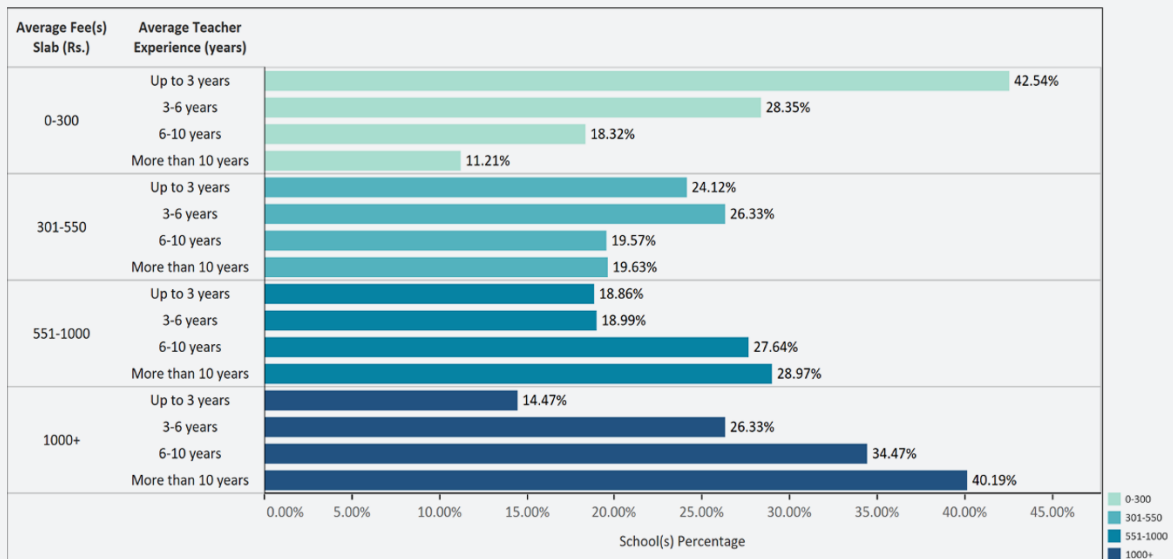


Figure 4.3:
Average Fees vs. Part-Time Teachers



Pradesh and 29.1% in Telangana have 1%–19% teachers employed part time.

Most teachers in Haryana, Andhra Pradesh and Jammu and Kashmir have an average of three to six years of work experience. Also, 32.9% of schools in Haryana mentioned that their teachers had 6–10 years of experience. This is also true for 60.1% of schools in Assam and 38.1% of schools in Telangana. Through our analysis we found that as school fees increased, budget private schools could afford more experienced teachers.

But are these minimum qualifications a matter of concern for parents? Research documents that although budget private school teachers are less qualified than those in government schools, parents do not consider these credentials to be one of the top concerns while choosing a school. In fact, it is the “teaching-learning” process that is important for parents in this decision (APU 2018).

In this context, budget private school teachers fare far better than government schools due to their presence in the classroom and accountability in the hands of the school management. Nearly all schools across the five states reported that school principals or leaders provided teachers feedback at least once a week, including 78% and 76.7% of schools in Telangana and Jammu and Kashmir, respectively. During interviews, schools mentioned that this

was easy to do given the size of the budget private schools. Principals or leaders were generally present on the premises and could simply walk to a class, review teacher performance, and share feedback.¹⁷

But in some states, budget private schools cannot fire teachers without obtaining permission from the state government.

In Delhi, Andhra Pradesh and Maharashtra, schools cannot hire or fire teachers without obtaining permission from the State Department of Education. For instance, as per the Maharashtra Employees of Private Schools (Conditions of Service) [MEPS] Regulation Act, 1977, schools need permission from the Education Officer/Deputy Director to suspend employees in cases of ‘alleged misconduct, misbehaviour of a serious nature or moral turpitude’. The Director may also revise the findings of the Inquiry Committee if he ‘is of the opinion’ that it has unreasonably exonerated an employee.

Under the Andhra Pradesh Education Act, 1982, employing a teacher with an invalid certificate, arbitrary removal of a teacher or failure to comply with the orders of the competent authority in this regard may result in the withdrawal of recognition.

This erodes the freedom of budget private schools to make independent decisions that may be best suited for their operations. Instead, they have to go through

¹⁷ We did not source any conclusive data on ‘Others’.

another layer of bureaucracy.

Budget private schools would also like to pay their teachers more but are constrained by their sole incoming revenues through school fees.

School owners mentioned that they were able to hire teachers as per their financial bandwidth, especially when asked about the number of teachers and quality of teaching. Only 30.9%–41.3% of schools across the five states strongly agreed that they had enough teachers. Further, 38.3% of schools strongly disagree or disagree with the statement in Jammu and Kashmir. For Andhra Pradesh, Haryana and Telangana, 20%–30% of schools strongly disagree or disagree that they have enough teachers. Also, 79.5% of schools in Andhra Pradesh, 73.3% in

Haryana, 73.1% in Telangana and 62.1% in Jammu and Kashmir strongly agreed or agreed that they had good-quality teachers. But 37.8% of schools in Jammu and Kashmir strongly disagreed or disagreed with the statement. Similarly, 20.4% of schools in Andhra Pradesh, 26.7% of schools in Haryana and 26.9% of schools in Telangana did not agree with the statement.

Moreover, 67.8% of schools in Haryana, 64.6% of schools in Telangana, 63.6% of schools in Andhra Pradesh and 60.7% of schools in Jammu and Kashmir strongly agreed or agreed that they would like to pay their teachers more. Schools mentioned, including those who disagreed with the statement, that they could only afford to pay teachers in proportion to their fees intake.



% of schools on teacher parameters

	<i>Strongly agree</i>	<i>Agree</i>	<i>Disagree</i>	<i>Strongly disagree</i>
We have enough teachers				
<i>Andhra Pradesh</i>	41.3	37.5	5.7	15.5
<i>Assam</i>	33.3	46.7	20	-
<i>Haryana</i>	39.7	34.9	8.2	17.1
<i>Jammu and Kashmir</i>	34.2	27.5	10.6	27.7
<i>Telangana</i>	30.9	39	11.2	18.8
We have enough good quality teachers				
<i>Andhra Pradesh</i>	40.5	39	6.4	14
<i>Assam</i>	26.7	53.3	20	-
<i>Haryana</i>	42.5	30.8	9.6	17.1
<i>Jammu and Kashmir</i>	36.4	25.7	10.1	27.7
<i>Telangana</i>	29.6	43.5	9	17.9



% of schools on teacher parameters

	<i>Strongly agree</i>	<i>Agree</i>	<i>Disagree</i>	<i>Strongly disagree</i>
We would like to pay out teachers more				
<i>Andhra Pradesh</i>	19.7	43.9	18.6	17.8
<i>Assam</i>	26.7	46.7	26.7	-
<i>Haryana</i>	32.9	34.9	14.4	17.8
<i>Jammu and Kashmir</i>	31.2	29.5	10.9	28.5
<i>Telangana</i>	24.7	39.9	17.9	17.5
We have a problem with teacher turnover				
<i>Andhra Pradesh</i>	7.6	16.7	46.2	29.5
<i>Assam</i>	6.7	6.7	66.7	20
<i>Haryana</i>	4.8	15.8	51.4	28.1
<i>Jammu and Kashmir</i>	6.2	8.2	56.7	29
<i>Telangana</i>	9.4	25.6	41.7	23.3

A marginal portion of schools across states strongly agreed that they faced a problem with teacher turnover. In Andhra Pradesh, only 24.3% of schools agreed or strongly agreed with the statement. In Telangana, 35% of schools acknowledged a problem with teacher turnover. Around 80% of schools disagreed or strongly disagreed with this statement.

Delhi state government under the Delhi School Education Act and Rules 1973 also requires schools to pay private school teachers at par with that of government school teachers. Under the Delhi RTE Rules, in the case of teachers of private schools, salary and allowances and their terms and conditions of service shall be decided by the school management as per existing rules. Similarly, Maharashtra and Kerala mandate private schools to fix scales of pay and other benefits as prescribed by the government. In Maharashtra, schools risk losing their recognition in the case of non-compliance. This becomes burdensome for budget private schools because teacher salaries are at least double the market-determined salaries of private school teachers (Kingdon 2020).

But restrictions on teacher hiring do not seem to have serious repercussions on maintaining the mandated pupil-teacher ratio.

The RTE Act also imposes certain teacher requirements to maintain for recognition. For instance, for upper primary schools, that is Grades VI-VIII, schools must have at least one teacher each for Science and Mathematics, Social Studies and Languages. The Act also requires at least 2 teachers for 60 children, 3 teachers for up to 90 children, 4 teachers for 120 students and 5 teachers for 200 students. If schools have more than 150 students, they should have at least 5 teachers and a Headmaster. For enrollment more than 200 students, the pupil/teacher ratio, excluding the Headmaster, should not exceed 40.

The U-DISE+ 2018-19 data on the pupil/teacher ratio included both government and private schools. It shows that most schools, apart from those in Andhra Pradesh, maintain a pupil/teacher ratio of less than 30. In Andhra Pradesh, primary schools and schools up to secondary classes have a pupil/teacher ratio of 34 and 35, respectively. These data-points do not distinguish between private and government schools.

As per our survey, on average, nearly 29 students were present per classroom in Andhra Pradesh before the pandemic. Similarly, 25 students in Assam and 28 students were present in Telangana before COVID-19. In Haryana, 33 students were present per classroom, and in Jammu and Kashmir, 20 students were present pre-COVID.

8. K-12 LAWS ACCORD DIFFERENTIAL TREATMENT TO PRIVATE AND GOVERNMENT SCHOOLS

Budget private schools operate on an uneven playing field where their competitor is also the referee.

At present, state governments operate their own schools, regulate private schools and set policies for all. This is a clear conflict of interest and places private schools on an uneven playing field. These schools have to compete with the government that plays the role of both market player and referee (CCS 2019; CCS 2020).

Such lack of separation and clarity of functions leads to perverse incentives where the role of administrators as market players conflicts with their ability to prioritize children's interests or ensure impartial rule-enforcement. When the rule-writer is also the service provider, day-to-day pressures of management compromise its attention to on-ground outcomes (World Bank 2004). Uncoupling these roles and determining who should be accountable to whom, and for what, make for efficient outcomes and clear lines of accountability (World Bank 2004; Posani and Aiyar 2009).

Across states, state functionaries are vested with multiple and overlapping functions, including regulatory, service delivery, financing and assessment (Anand and Sudhakar 2020). For example, a District Education Officer in Maharashtra has to oversee the implementation of Samagra Shiksha Abhiyan as part of their service delivery functions. In addition, the District Education Officer may be directed by the Director to find additional evidence in the case of alleged misconduct, misbehaviour of serious nature or moral turpitude of an employee under the regulatory functions.

Figure 4.4:

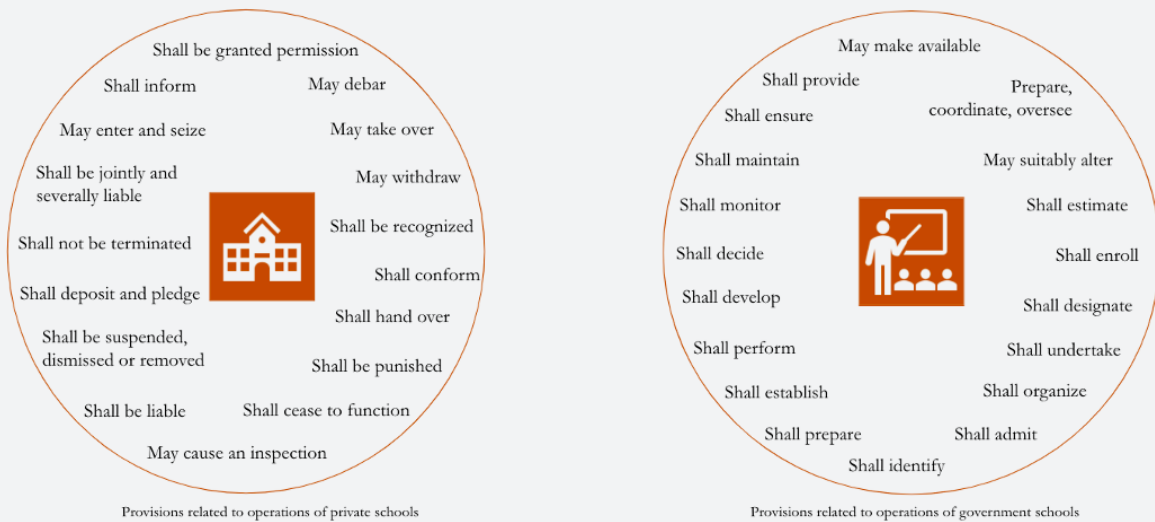
Functionary	Responsibilities per Function					
	Regulatory			Service Delivery	Financing	Assessment
	Rule-making	Compliance	Enforcement			
Director of Education	-	✓	✓	✓	-	-
Deputy Director of Education	✓	✓	✓	-	-	-
District Education Officer	-	✓	✓	✓	-	✓
Local Authority	-	✓	-	✓	-	-
State Government	✓	✓	✓	✓	✓	-

The National Education Policy 2020 and Kasturirangan Committee in 2019 both recognize these issues stemming from the concentration of powers. To check this conflict, both proposed the establishment of an independent regulator for school education that took away the regulatory functions from the State Departments of Education. The regulator, as per the National Education Policy 2020, will establish a ‘minimal set of standards based on basic parameters (namely, safety, security, basic infrastructure, number of teachers across subjects and grades, financial probity and sound processes of governance)’, to be followed by all schools.

When we asked school owners about the regulations applicable to them, we got similar responses across states asking for uniform treatment of schools, including private schools.

Haryana: ‘The most important thing is for the regulations to be uniformly applied across all schools. The same regulations for private schools should also be applied to Govt. schools. Private school regulations are very strict, and none of them are applied to Govt. schools. There is no system of support for private schools, no mode of information dissemination or training for private school employees and owners. We’re only making their work easier so they should help us too.’

Figure 4.5:



Across laws, Anand and Sudhakar (2020) find that the language of the legislation for private schools with that for government schools comes with a striking absence of accountability mechanisms for the latter. We find a similar language of accountability in our extended state analysis as well. While private schools are subject to clauses such as 'shall cease to function' or 'may take over', government schools do not face any such enforcement actions. Instead, they are subject to provisions such as 'shall maintain', 'shall prepare' or 'shall admit'. There is a difference in approach: when it comes to government schools, the law adopts a managerial tactic focused on carrots with no stick. It is the opposite for private schools.

At present, private schools face the risk of arbitrary behaviour at the hands of the government. For instance, in Maharashtra, the Maharashtra Educational Institutions (Transfer of Management) Act, 1971, gives the state government power to transfer the management of a private school to a society if 'it is of the opinion' that it is in the 'public interest'. This society is supposed to consist of officers, among other members, from the Education Department as nominated by the state government. The Maharashtra Educational Institutions (Management) Act, 1976, allows the Director of Education to take over the management of a school if he is 'satisfied' that the school is acting in a manner detrimental to the public interest for a period not exceeding three years.

The acts do not define what serves as public interest or any behaviour that is detrimental to it. There is no clarity on the basis for school takeover. Moreover, the Act does not outline any check on the process of transferring management to the Government,

resulting in arbitrary decision making.

State actions that deprive an individual of their life, liberty or property must follow due process and natural justice. This includes getting advance and adequate notice of government action, an order detailing the reasons for undertaking the particular action and a reasonable opportunity to be heard before such a deprivation (Minattur 2015; Chauhan 1995). In addition, a law must ensure that bias and conflict do not creep into the decision-making process.

A majority of the state school education laws were also introduced before 2000. Although in many cases, the provisions of these laws have been revisited and revised in the form of amendments, some laws continue to have archaic and outdated provisions. For instance, under the Kerala Education Act, 1958, penalty for child labour ranges from \$0.20 (INR 15) to \$0.40 (INR 30).

9. K-12 LAWS ARE HARD TO UNDERSTAND, COMPLEX AND RESTRICTIVE

The volume of laws, number of restrictions and their complexity impact a country's economic growth, productivity and consumer prices (McLaughlin, Strosko, and Jones [2019](#)). Using the QuantGov package, we evaluated state education laws on these three parameters: law volume (or total word count), number of restrictions a law imposes, and complexity of the law.

These metrics may indicate the extent of regulatory burden and restrictions on schools and reveal the ease with which regulatees can understand the law. In addition, we also studied the content of the laws and discretionary phrases to understand the focus of legislation and how powers were vested in the hands of the executive. Such a study has not been done before for school education laws and brings a unique perspective to the regulatory architecture of the sector. We found that

1. K-12 laws are voluminous

West Bengal has the most voluminous education laws, with a total word count of 61,458 words, followed by Telangana (43,333), Maharashtra (42,811) and Uttar Pradesh (41,651). States with the least total voluminous education laws are Nagaland (1,002) and Kerala (7,312) (Bedi and Narang [2021](#)).

2. K-12 laws are hard to understand

A law that is difficult to comprehend may increase costs in terms of effort, time and money for regulated entities to comply with it. On the Flesch Reading Score, each law is assigned a score on a scale of 0–100; the higher the Flesch score, the easier the reading. To comprehend the score-band of 30–50, an individual must be at least a college graduate. Delhi has the most difficult-to-read school education laws with 7.5 on the Flesch scale (Bedi and Narang [2021](#)).

3. K-12 laws are restrictive and discretionary

Arunachal Pradesh has the most restrictive school education law with terms such as 'seize', 'punished', 'fine' and 'suspend' appearing after every 231 words. Nagaland has the least restrictive education laws

with only one restrictive word in its laws (Bedi and Narang [2021](#)).

In our analysis of discretionary terms in the law, phrases such as 'may deem fit', 'may think fit', 'may be specified' and 'is satisfied' emerged as the most commonly used in state-level legislation (see Appendix 1). Such phrases, unless accompanied by guidance on how to determine what is 'suitable' or 'satisfactory', give enormous power to the executive in determining their actions. For such provisions where authorities have to exercise their 'discretion' or make a choice between alternative courses of action, there should be measures to ensure that the concerned parties are not subjected to the arbitrary use of powers at the hands of the authority. In exercising discretion, the executive ought to operate within a constraining framework that provides checks on their actions (CCS 2019; Waldron 2020).

West Bengal and Maharashtra have the highest occurrences of discretionary phrases out of the studied states. Nagaland only has one discretionary phrase, the least out of all the states.

Public interest, in particular, occurs 36 times across 56 laws for 12 states. In Maharashtra alone, it is referred to 13 times. When left undefined, the public interest may lead to excesses committed by the executive without any checks. For instance, in 2011, the High Court of Bombay criticized the excess executive discretion exercised by the Deputy Director of Education in the process of transferring management of a school and issued guidelines. In this case, trustees of Jeejau Shiksha Sanstha raised objections over the manner of transfer of management to another society. The court found that although the Secondary School Code vested the Deputy Director of Education with the power to permit the change in management, no accompanying guidelines existed for grant of this permission or exercise of discretionary power. In 2012, the High Court of Bombay overturned the order passed by the Deputy Director of Education on taking over the management of a school under the Jyotirling Education Society. Not only had the Deputy Director of Education not followed the guidelines laid down in the Jeejau Shikshan Sanstha case but also neglected other provisions for a reasoned order such as hearing comments from the school in question.

Common discretionary phrases in state-level K-12 legislation sized as per their frequency



Based on recognition provisions, restrictive terms, discretionary terms and operational regulations, Haryana fares better than other states. In particular, it does not over-regulate teacher hiring or salaries, giving freedom to budget private schools over their entry and operations. Delhi surprisingly ranks the highest on recognition provisions, restrictive terms and discretionary terms. But we believe this is due to the evaluation matrix not accounting for entry certifications other than recognition such as permission to establish and essentiality certifications and time-limits for processing applications.



CHAPTER

5

IMPACT OF COVID-19

What happened to schools?

The government ordered schools to shut down across India in March 2020 (TOI-Online [2020](#)). These shutdowns have come at a great cost for **budget private schools**. Budget private schools charge nominal fees and cater to economically weaker sections across India. Approximately 90 million children from low-income households attend 400,000 budget private schools (Khandelwal [2018](#)).

In the initial months of lockdowns, schools had to quickly transition to online education while struggling with **fee collection**. Parents across states filed a plea in the Supreme Court seeking more time to pay schools due to COVID-19 (PTI [2020](#)). The Supreme Court refused to hear the petition, arguing that it had to be tackled by the executive first. Courts also asked schools to pay teacher salaries (Thomas A. [2020](#)). Schools threatened to cut access to online classes in the case of non-payment (Thomas [2020](#), *Times of India* [2020a](#)). Both parties approached High Courts in at least 15 states for a ruling (Basu [2020](#), Singh [2020](#), and *Times of India* [2020b](#)).

In a survey conducted by the Indian School Finance Company, 87.5% of budget private school respondents reported struggling with fee collection (Agarwal [2020](#)). NISA found that out of 3,690 budget private schools in its network, only 3.8% were able to collect more than 10% of fees estimated for the academic year 2020/21.

From our survey, we documented a sharp rise in the default rate for fee collection from the academic year of 2019/20 to 2020/21. Before the pandemic, most schools would face a default rate of 21%–40%. Also, 22.6% of schools in Haryana responded that 21%–30% of parents defaulted on fees. Moreover, 23.5% of schools in Andhra Pradesh reported that 31%–40% of parents were defaulters. Similarly, 13.6% of schools in Jammu and Kashmir and 25.1% of schools in Telangana had 31%–40% of defaulting parents.

But after the spread of COVID-19 and its consequent lockdowns, nearly all schools across the five states struggled with fee collection. In Haryana, the percentage of schools with a default rate greater than 31% rose from 56.16% to ~87%.

Figure 5.1:
Fees Not Paid: 2019-2020

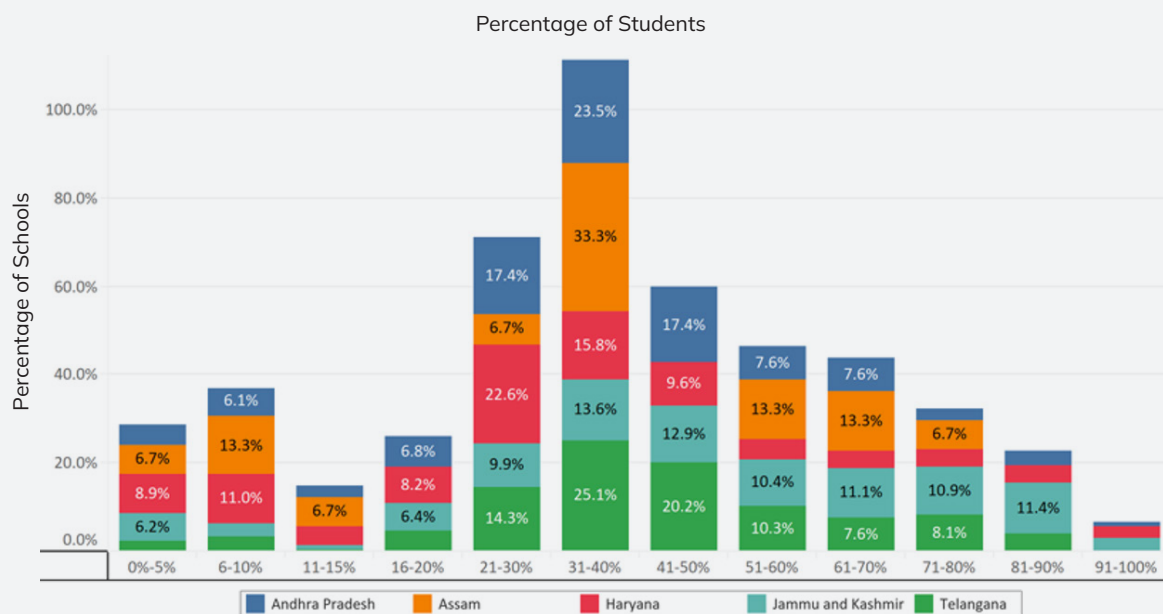


Figure 5.2: Percentage of Schools with fee default: Pre-COVID vs. Post-COVID

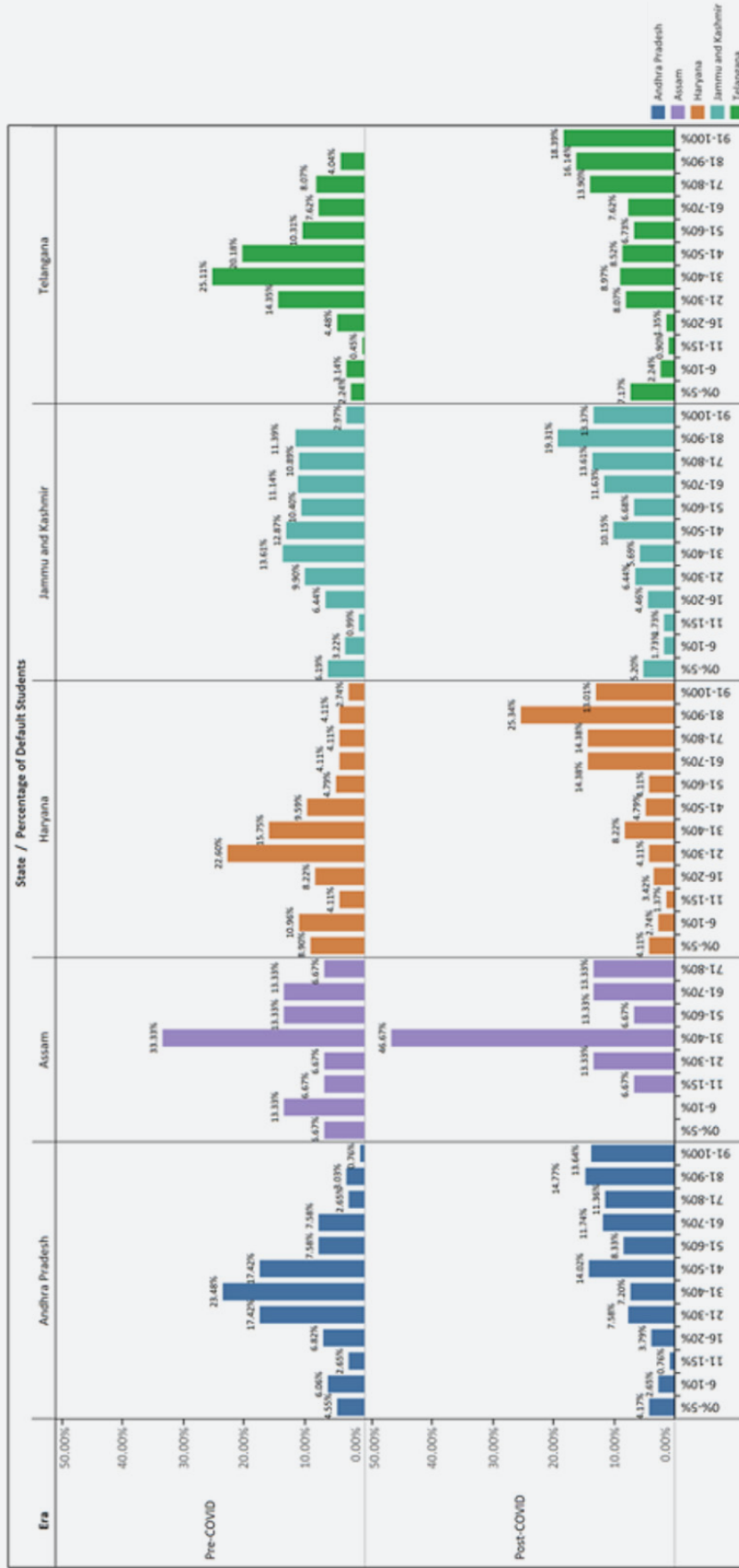
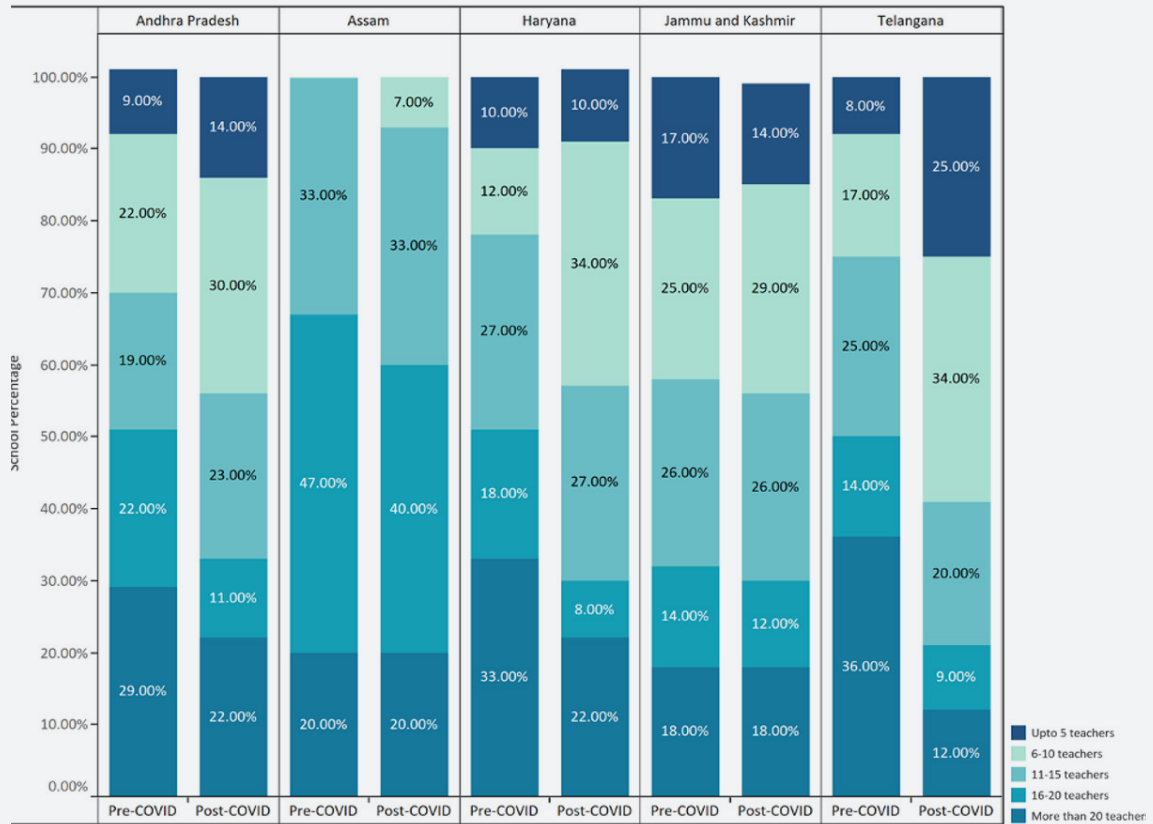


Figure 5.3:
Teacher Strength: Pre-COVID vs. Post-COVID



When asked how schools maintained their operations, the owners reported that

'We had to reduce staff, we have also reduced our own personal expenditure to ensure sustainability.'

'We conducted regular staff meetings. Our first step was to make staff understand that they would not get paid immediately. We also poured our own money into this.'



% of schools that agree to statements on why parents did not pay fees during the pandemic

Defaulting parents are spending money on private tuitions and coaching institutes



Andhra Pradesh	37.1
Assam	26.7
Haryana	68.5
Jammu and Kashmir	39.4
Telangana	61.4

Defaulting parents have shifted their children to other private schools with lower fees



Andhra Pradesh	36
Assam	60
Haryana	35.6
Jammu and Kashmir	35.4
Telangana	50.2

Defaulting parents are likely to re-enrol children when schools reopen physically



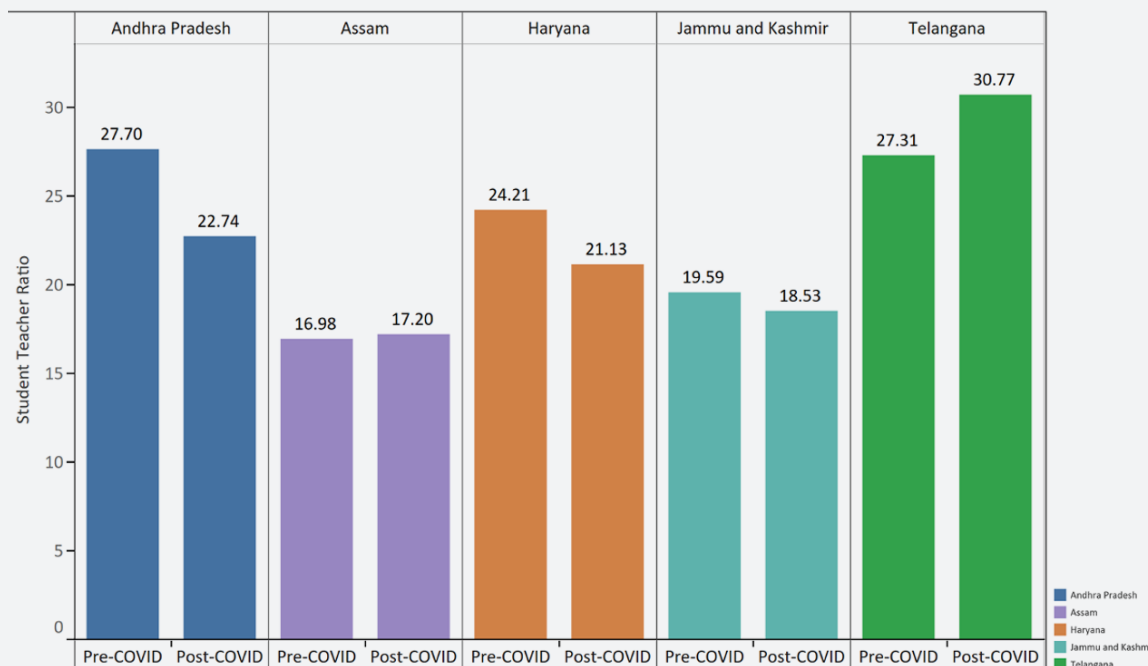
Andhra Pradesh	61
Assam	73.3
Haryana	56.2
Jammu and Kashmir	70
Telangana	70.4

Defaulting parents have shifted their children to government schools



Andhra Pradesh	81.1
Assam	20
Haryana	53.4
Jammu and Kashmir	42.1
Telangana	65

Figure 5.3:
Student Teacher Ratio: Pre-COVID vs. Post-COVID



When asked why parents did not pay fees, 81.1% of schools in Andhra Pradesh reported that parents had shifted their children to government schools. Also, 60% of schools in Assam agreed that defaulting parents had shifted their children to other private schools that charged a lower fee. Further, 70%–73.3% of schools in Jammu and Kashmir, Assam and Telangana responded that parents who did not pay fees were likely to re-enrol their children when the school would re-open physically. In addition, nearly 70% of schools in Haryana agreed that parents were instead spending their money on private tuitions and coaching institutes.

What happened to teachers?

The surveyed schools have a range of teachers employed. Before COVID-19, Andhra Pradesh had a relatively balanced distribution of over 6–10 teachers, 11–15 teachers and 16–20 teachers. Also, 29.2% of schools in Andhra Pradesh had hired more than 20 teachers. In addition, 46.7% of schools in Assam employed 16–20 teachers. In Haryana and Telangana, 32.9% and 36.3% of schools respectively, had more than 20 teachers. Schools in Jammu and Kashmir also had an even distribution among 6–10 teachers, 11–15 teachers, and more than

20 teachers. Post-COVID, the schools in Andhra Pradesh with 16–20 teachers dropped from 21.6% to 11%. Similarly, in Haryana, these schools dropped from 17.8% to 7.5%. The teacher distribution in Jammu and Kashmir remained fairly stable post-COVID. In Telangana, schools with 6–10 teachers increased from 17% to 34.1%.¹⁸

The pupil/teacher ratio dropped sharply for Andhra Pradesh and Haryana from 27.70 to 22.74 and from 24.21 to 21.13, respectively. There was a slight decrease for schools in Jammu and Kashmir from 19.59 to 18.53. For Telangana, the ratio rose from 27.31 to 30.77.

What happened to parents and children?

Most schools began relying heavily on WhatsApp and sending pre-recorded videos of teachers and worksheets for students. Schools tried to continue actively engaging students (whether they paid fees) in online education, particularly by involving parents into the mix. They communicated with parents to keep track of progress, guiding them on how to support their children. From our interviews, we learnt that in Jammu and Kashmir, schools were unable to conduct proper classes because they only

¹⁸ 7% of schools post-COVID in Assam chose 6–10 teachers. It does not reflect so in the chart as we removed the category for 6–10 teachers because no schools opted for it for pre-COVID.

had access to the 2G internet. School owners also mentioned that their schools had essentially been closed for the past two years post-abrogation of Article 370 in the valley that determined the political and administrative status of the state.

Poor access to resources including stable internet connection, smartphones and laptops has hampered the learning process of many students and deepened the social divide present in our society. Only 24% of Indian households have internet connections to access e-education, and there is a large rural–urban and gender divide that is likely to widen the learning gap across high-, middle- and low-income families (Mint 2020). Teachers expressed the impossibility of maintaining an emotional connection with children using online platforms. In addition, it was difficult to conduct meaningful assessments of learning. Teachers also reported that children were unable to complete assignments shared during online classes (Azim Premji Foundation 2020).

After the pandemic struck, almost all schools apart from those in Jammu and Kashmir suffered a substantial drop in enrollment. Schools in Jammu and Kashmir were subject to political turmoil. It was only in October 2019 that they reopened after two months of curfew post-amendment to Article 370 of the Constitution of India. Starting in March 2020, these schools had to shut down once again. This uncertainty in schooling could be a reason why enrollment in schools was not significantly affected by the pandemic.¹⁹

Table 5.1:
Average enrollment in schools across grades

	Pre-COVID	Post-COVID	% change
Andhra Pradesh	512	351	– 31.4%
Assam	336	319	–5.05%
Haryana	471	278	–40.97%
Jammu and Kashmir	284	272	–4.22%
Telangana	548	365	–33.39%

In our survey, the average number of students per classroom dropped across the five states after the pandemic: Andhra Pradesh, Haryana and Telangana

saw the steepest drops.

There was a slight increase in the proportion of children attending government schools and a decline in private school enrollment when compared with data from 2018. A slightly higher proportion of children were not enrolled in school in 2020 compared with 2018. But given the disruptions caused by the COVID-19 crisis, at least for the youngest children (age six to seven years), the main cause for not being enrolled in school right now may be that families are waiting for schools to open to seek admission (ASER 2020).

Around 79% of students participating in online classes use smartphones to attend lessons, only 17% of students use laptops and computers, and remaining 4% of students attend it through mediums such as tablets. Further, 57% of students stated poor internet connectivity to be a big hindrance for them to attend the online classes. Also, 31% of students found focusing on this mode of education to be difficult, and 12% stated that getting their doubts clarified while studying online was strenuous (Mint 2020). Another difficulty that arises in this mode of education is the considerable inconsistent and impersonal expertise. The lack of physical interaction and inspection in this mode of education is also likely to result in students dropping out (Prasad 2020).

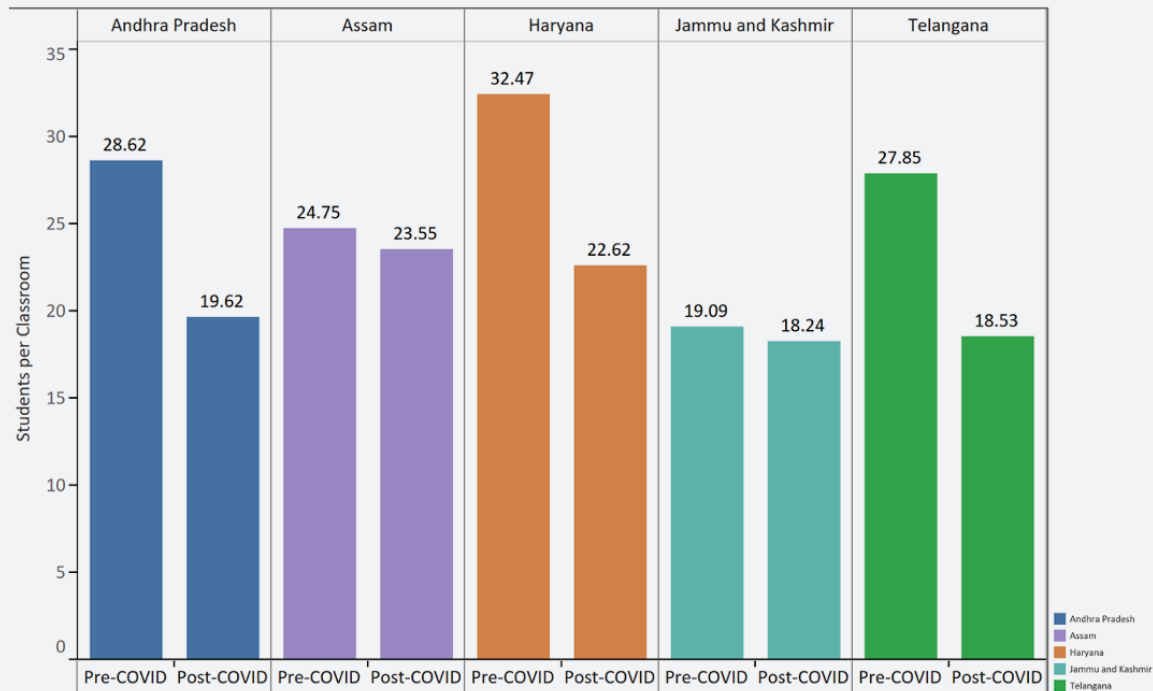
As per ASER (2020), about 75% of children get some help at home; roughly 30% of children attend paid tuition classes. The more educated the parents, the more help their children receive. Among families where both parents have completed Grade IX or more ('high' level of education), close to 45% of children receive help from their mothers. In 'low'-education families, siblings help a lot too. If materials are available, it is more likely in the more educated families that children will be studying at home. ASER, interestingly, found that even if no materials were received, slightly more than a third of all children from all types of families did some learning activity at home.

Other mechanisms such as speakers, radio broadcasting, snowball learning, initiation of buddy projects and delivery of study material have offered a recourse at least in limited bounds (Dixit 2020). From our interviews, we learnt that school owners started 'online classes and conducted operations and classes on Google Meet, WhatsApp and other platforms'.

Homeschooling has been widely discussed too

¹⁹ Although there is a small drop in enrollment for Assam as well, our sample is too small to draw a conclusion.

Figure 5.4:
Average Students per Classroom: State-wise Comparison



(Priyadershini 2020). In cities such as Bengaluru, Pune and Mumbai, this curriculum, where students stay back at home, learn and grow watching their tutor or parents, allows them to explore their creativity, curiosity, interests and passion by being able to self-direct their learning process. Ed-tech platforms saw a spike in users. Byju's even acquired WhiteHat Jr for \$300 million (Sheth 2020).

How did governments respond?

Several state education Boards also reduced or planned to cut the syllabus for this academic year. For instance, Uttar Pradesh decided to reduce the syllabus of the state Secondary Education Board by 30% and divide the syllabus into three parts (Seth 2020). The first part will use videos, online classes and telecasts on Swayam Prabha and Doordarshan, the second part will be studied by students on their own and the third part will contain project work.

Most private schools in India are registered as either Trusts or Societies. **This has prevented them from accessing any form of relief funds** offered by the government for micro-, small-, and medium-scale enterprises. By the third month, the situation started looking increasingly difficult for schools. With salaries, rent and bills to pay without any fees being collected and hope regarding the resumption of schools dwindling, as experienced by most schools in the sector, schools began resorting to cost-cutting measures, including lay-offs. Many teachers were

also forced to look out for other means of sustenance including selling vegetables to meet their expenses due to pay cuts or unemployment (Hindu 2020). The severity of the problem lay to a great extent in the near absence of fee collection for not only the current academic year but also the previous one.

ASER (2020) also checked the preparation of government school teachers. Further, 40.8% reported having phone numbers for all children, and 37.7% reported having phone numbers for at least half of all children. Also, 86.8% of teachers said that they distributed textbooks to all children in the grade they were reporting about. In addition, 50.0% reported receiving training of some sort: of these, 68.8% got brief instructions (others got a series of sessions).

What are the potential repercussions?

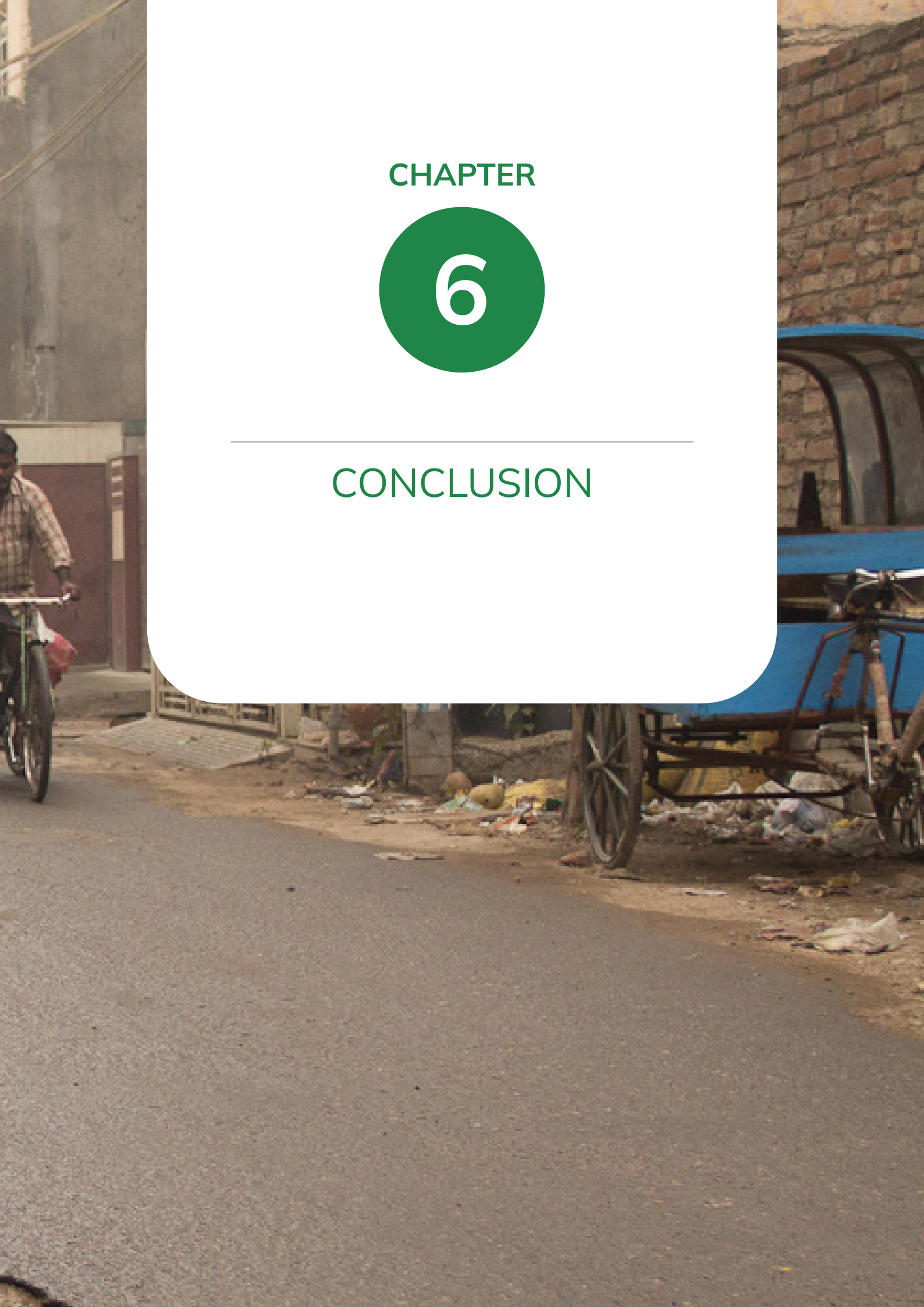
With the near absence of fee collection, low expectation of schools reopening, transferring of students (to both government schools and rural areas), inability/unwillingness of parents to pay fees for online education and rising piles of bills, there might be an increasing percentage of schools shutting down in the short term, pushing a large number of students out of schools. People have also raised concerns over prolonged school closures and escalation in child labour (Vyas 2020). ILO and UNICEF estimated that a 1% increase in poverty led to a 0.7% rise in child labour (ILO 2020).



CHAPTER

6

CONCLUSION



The K-12 education system in India is the second largest in the world, with more than 1.4 million schools and 250 million enrolled students, second only to China. But at present, India faces two major challenges: access and quality. Research reports that India will need nearly 1,30,000 additional schools by 2022 to keep up with rising enrollment trends. In addition, learning outcomes in both government and private schools continue to be poor (EY 2020).

Budget private schools are a key player in this regard. Over the years, the private schooling sector has been steadily expanding. In 1978, private schools served only 3.4% of students. At present, they cater to nearly 50% of students in India (Central Square Foundation 2020). Across India, 45.5% of students in private schools pay less than INR 500 monthly (MoSPI 2019). This suggests that most of the private schooling sector consists of budget private schools.

Yet, their contribution to parental choice in K-12 education is neglected in the policy discourse. Instead, a prescriptive regulatory system keeps out well-placed entrepreneurs and does not punish the bad players. The focus on inputs makes it difficult for the best-played players to enter the sector. There is an urgent need to rewire the current K-12 system to focus on outcomes and allow innovation in the sector. The National Education Policy (NEP) 2020 raises the need to review and revise the existing regulatory framework for school education in India (Government of India 2020). One of the main focus areas of the Policy is to shape the school education regulatory system in a way that it continually improves 'educational outcomes'. The mid-term appraisal of the 11th Five-Year Plan for India also highlights this issue arguing that 'private sector resources should be leveraged to improve infrastructure and quality' (Planning Commission 2011). The appraisal pinpointed easing entry barriers and revisiting norms such as land requirements as some of the key elements of the reform agenda.

In this report, we attempted to fill knowledge gaps about budget private schools and quality education for India. Our aim in this report was to provide a thorough and up-to-date snapshot of the budget private school segment in the country, capturing the contributions of the sector, challenges faced by the sector and challenges posed by the sector.

We found that the operating environment for the budget private schooling sector was fraught with challenges throughout the lifecycle of a private

school. In particular, we found that the system needed to address three broad issues: input-centrism, checks on quality and autonomy in finances and teachers.

1. Input-centric norms not cognizant of ground realities

At the time of entry, budget private schools need to meet the requirements of the RTE Act, 2009. These include a minimum classroom size, pupil-teacher ratio and a library among other requirements. Land norms, in particular, are a hindrance. For instance, schools need at least 14,400 square feet of land in Assam to set up a school. Jammu and Kashmir forms an interesting case study as schools did not need to meet the standards of the RTE Act, 2009. Its state laws did lay down physical facilities that a school was required to provide. But these requirements did not prescribe minimum land requirements that a school needed to show before operating. This seems to be a considerable burden off the shoulders of budget private schools in Jammu and Kashmir.

Apart from these norms, schools need to obtain no-objection certificates from different departments and abide by conditions of state legislation. State governments and local bodies may impose new requirements from time to time.

Nearly half of all surveyed schools across Jammu and Kashmir, Haryana, Telangana and Andhra Pradesh did not have access to a government-provided drainage and sewage network. Yet, as per our survey and U-DISE data, most schools, including government schools, are able to provide separate toilets for girls and boys. It is possible that schools in both cases reported false data to maintain the facade of compliance and their reputation. But this is a clear signal of where policies are distanced from reality.

Another example that came up in states was that of fire safety certification. Most budget private schools are located in narrow lanes that do not meet the parameters for fire safety as they are structured currently. For instance, one of the reasons schools struggle to obtain this approval is that they were located in areas where the lane was too narrow for fire trucks to access.

2. Limited State capacity to impose checks on quality

Government inspection of surveyed budget private schools varied from once in three months to three

years. There was no set-pattern or system for checking performance. Given the limited scale of inspections, we must question whether they are an efficient tool for gauging the quality of education. Accreditation can be a game-changer in this regard. This mechanism bridges the information gap between providers and consumers of school education by sharing information on school capacity. It covers aspects such as school governance, scholastic and co-scholastic processes, human resource, leadership, infrastructure and beneficiary satisfaction.

3. Operational autonomy for finances and staff employment

Private schools do not have the freedom to hire their teachers freely or pay them as per their revenues. Jammu and Kashmir and Haryana are the two states in our study that allowed budget private schools this freedom. This autonomy had a positive impact on other parameters such as compliance with RTE norms, fewer part-time teachers and infrastructure such as interactive classroom equipment as schools had more financial resources and freedom to operate.

Budget private schools also struggle with the regulation on fees. Already operating on thin margins, budget private schools are not allowed to take their surplus, if any, of the school, which forces them to cheat. These schools faced the worst during the pandemic as parents were unable to pay fees and asked for relief from paying school fees due to the aftermath of COVID-19. But schools have no room to make this adjustment without risking closure.

CHAPTER



POLICY
RECOMMENDATIONS

The RTE Act, 2009, was a step towards universal access and enrollment, making elementary education a right for all children. The RTE Act, 2009, emphasizes the duties and inputs necessary for schools providing education to elementary students. It assumes that adherence to these will ensure increased access and quality. However, independent assessments such as ASER show that this has not been the case, with learning outcomes declining post-RTE 2009. Given increasing quality concerns, near-universal school access means little if the quality of learning is not being delivered. The NEP 2020 rightly recognizes this and identifies key areas for reform (Government of India [2020](#)).

At present, if private schools are found to be non-compliant with the RTE recognition norms, they have to shut down. We recommend three ways in which we can move towards an outcome-based recognition system instead and step away from this 'one-size-fits-all' model under the RTE and other school-specific legislation.

1. Replace input-based licensure with obligations focused on the quality of school services

The NEP 2020 recognizes the need to revisit the existing regulatory framework and enable improvements for quality education for all children. In particular, it pinpoints the current input-centrism of the regulatory architecture and the need to make it responsive to realities.

'The overemphasis on inputs, and the mechanistic nature of their specifications – physical and infrastructural – will be changed and requirements made more responsive to realities on the ground, e.g., regarding land areas and room sizes, practicalities of playgrounds in urban areas, etc. These mandates will be adjusted and loosened, leaving suitable flexibility for each school to make its own decisions based on local needs and constraints, while ensuring safety, security, and pleasant and productive learning space.'

The Policy also proposes 'a minimal set of standards based on basic parameters (namely safety, security, basic infrastructure, number of teachers across subjects and grades, financial probity and sound processes of governance)' to be followed by all schools including government schools.

The most critical element that a school needs to ensure is the safety of children. Schools should show proof of compliance with general safety and building laws. However, instead of the remaining certifications that delay the process of recognition and operations such as Chemical Lab Safety, private schools may be held liable under the duty-of-care obligations towards their students. This principle finds root in the law of tortious liability, commonly known as the law of torts. Under this, a party can be held liable for negligence, if its negligent omission or actions harm others.²⁰ This means that a school can be held liable for negligence towards its students. As per the principle of vicarious liability, the court can assign liability for an injury to the school management for the negligence of their employees.

The NEP 2020-proposed that regulators and laws should focus on the quality of education. One, the proposed regulating way to measure learning outcomes is by facilitating assessments. Two, it must allow more autonomy for private schools to experiment and innovate.

2. Allow different types of service providers for K-12 education by lifting restrictions on capital

Current regulations and judgements impose multiple restrictions on the business model of a school. Under state RTE Rules and certain school Board affiliation norms, only societies, trusts or companies registered under Section 8 of the Companies Act, 2013, can open a school. These regulations and judgements ([Unnikrishnan v. State of Andhra Pradesh, 1993](#) and [T.M.A Pai v. State of Karnataka, 2002](#)) constrain the ability of educational institutions to raise commercial investments. These keep out well-intentioned players out of the K-12 sector due to their inability to raise appropriate capital. An eligible educational entity should include any body corporate under the Companies Act, 2013, and any other body corporate that operates, manages and maintains schools, including trusts and societies. This will give the schools the freedom to run as a company, attract investments and be held to the accounting standards of other businesses. Not only will this bring in another layer of accountability in the sector, but it also will encourage innovation and diversity in offerings.

²⁰ As per Blyth vs. Birmingham Waterworks Co. (1856), negligence may be defined as 'the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do'.

3. Create a separate regulatory category for budget private schools

Budget private schools currently struggle to operate at the optimal level due to regulations such as minimum teacher qualifications and teacher salaries. In Delhi, private schools have to pay their teachers at par with government school teachers, that is at least double of what they pay as per market rates. Budget private schools also have to obtain certifications such as Fire Safety that are technically infeasible to meet. Similarly, many budget private schools are located in areas where the government has not provided access to drainage and sewage. Although schools still supposedly meet toilet and other sanitation standards, basing recognition or their ability to operate solely on these metrics is distancing oneself from the reality of budget private schools and a significant portion of the Indian youth. A school owner in Telangana rightly remarked:

'The recognition requirements are the same for different kinds of private schools. We need to differentiate between low budget, high budget, corporate (minority education institutions, private coachings, elite schools come under corporate).'

The present norms should be revisited and formulated from a principles-based approach that caters to differences in schools across India.

CHAPTER



STATE FACTSHEETS

ANDHRA PRADESH

There are nine acts with seven rules governing the functioning of educational institutions in the state of Andhra Pradesh.

Act	Rules
<ul style="list-style-type: none"> • Andhra Pradesh Education Act, 1982 • Andhra Pradesh School Education (Community Participation) Act, 1998 • Andhra Pradesh Educational Institutions (Regulation of Admissions and Prohibition of Capitation Fee) Act, 1983 • Andhra Pradesh Private Educational Institutions Grant-In-Aid (Regulation) Act, 1988 • Andhra Pradesh Reservation of seats in the Educational Institutions and of appointments or posts in the Public Services under the State to Muslim Community Act, 2005 • Andhra Pradesh Private Educational Institutions Maintenance Grant (Regulation) Act, 1995 • Andhra Pradesh Educational Institutions Grant-In-Aid (Regulation) Supplementary Provision Act, 1995 • Andhra Pradesh Educational Service Untrained Teachers (Regulation of Services and Fixation of Pay) Act, 1991 • Andhra Pradesh Private Aided Educational Staff (Regulation of Pay) Act, 2000 	<ul style="list-style-type: none"> • Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration and Control of Institutions of Higher Education) Rules, 1987 • Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration and Control of Schools under Private Managements) Rules, 1993 • Andhra Pradesh Study of Languages in School Education Rules, 2003 • Andhra Pradesh Right of Children to Free and Compulsory Education Rules, 2010 • Andhra Pradesh Educational Institutions (Parent –Teachers Association) Rules, 1987 • Andhra Pradesh Teachers (Regulation of Transfer) Rules, 2013

1. Recognition of a private school

- a. Recognition under the RTE Act: every school, other than a school established, owned or controlled by the Union Government, the state government or the local authority
 - i. Run by a society registered under the Societies Registration Act, 1860, or a public trust constituted under any law for the time being in force
 - ii. Not run for profit to any individual, group or association of individuals or any other persons
- b. Andhra Pradesh Education Act, 1982:
 - i. The competent authority shall, from time to time, conduct a survey to identify the educational needs of the locality under its jurisdiction and notify through the local newspapers calling for applications from the educational agencies desirous of establishing educational institutions.
 - ii. Any educational agency including local authority or registered body of persons intending to establish an institution imparting education, open higher classes in an institution imparting

primary education, upgrade any such institution into a high school or open new courses (Certificate, Diploma, Degree, Post-graduate Degree Courses, etc.) may make an application for the grant of permission.

- iii. Any educational agency applying for permission shall, before the permission is granted, satisfy the authority concerned that there is a need for providing educational facilities to the people in the locality and adequate financial provision for continued and efficient maintenance of the institution as prescribed by the competent authority, and the institution is proposed to be located in sanitary and healthy surroundings.
- iv. The competent authority may, by order in writing, grant recognition in respect of any institution imparting education or for a higher class in any such institution, permitted to be established under Section 20 subject to such conditions as may be prescribed in regard to accommodation equipment, appointment of teaching staff, syllabi, textbooks and other related matters.
- v. On and from the commencement of the Andhra Pradesh Education (Amendment) Act, 1987, no individual shall establish a private institution.

2. Staff employment

- a. Andhra Pradesh Education Act, 1982: Recognition of a school may be withdrawn if a school employs or continues to employ any teacher whose certificate has been cancelled or suspended or arbitrarily removes a teacher or fails to comply with the orders of the competent authority.
- b. Andhra Pradesh Education Act, 1982: No teacher or member of the non-teaching staff employed in any private institution shall be dismissed, removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

3. Fee regulation

- a. Andhra Pradesh Educational Institutions (Regulation of Admissions and Prohibition of Capitation Fee) Act, 1983: Collection of any capitation fee by any educational institution or by any person who is in-charge of or is responsible for the management of the institution is hereby prohibited.
- b. Andhra Pradesh Educational Institutions (Regulation of Admissions and Prohibition of Capitation Fee) Act, 1983: It shall be competent for the Government, by notification, to regulate the tuition fee or any other fee that may be levied and collected by any educational institution in respect of each class of students.

4. Grievance redressal

- a. Andhra Pradesh Right of Children to Free and Compulsory Education Rules, 2010: Every private school shall develop its own mechanism for redressal of grievances of its teachers.

5. Admissions

- a. Andhra Pradesh Right of Children to Free and Compulsory Education Rules, 2010: Every private unaided school must reserve 25% of seats at the entry level for students from economically weaker and socially disadvantaged groups.
- b. Andhra Pradesh Educational Institutions (Regulation of Admissions and Prohibition of Capitation Fee) Act, 1983: Admission to educational institutions shall be made on the basis of either the marks obtained in the qualifying examination or the ranking assigned in the entrance test conducted as prescribed.

6. Medium of instruction

- a. Andhra Pradesh Study of Languages in School Education Rules, 2003: Schools must teach students Telugu from Classes I to X. The government may withdraw recognition if schools do not comply with the provisions of the rules.

DELHI

There are two acts with two rules governing the functioning of educational institutions in Delhi.

Act	Rules
<ul style="list-style-type: none"> • Delhi School Education Act, 1973 	<ul style="list-style-type: none"> • Delhi School Education Rules 1973
<ul style="list-style-type: none"> • Delhi Primary Education Act, 1960 	<ul style="list-style-type: none"> • Delhi Right of Children to Free and Compulsory Education Rules, 2011

1. Recognition of a private school

- a. Recognition under the RTE Act: Every school, other than a school established, owned or controlled by the Union Government, the state government or the local authority
 - i. Run by a society registered under the Societies Registration Act, 1860, or a public trust constituted under any law for the time being in force
 - ii. Not run for profit to any individual, group or association of individuals or any other persons
- b. Delhi School Education Act and Rules 1973:
 - i. Essentiality of school: School owners to intimate the Administrator of their intention to establish a school. The Administrator may inform the person or persons by whom the intimation was given to him whether opening of the proposed new school would be in the public interests
 - ii. Recognition of schools: The appropriate authority may recognize any private school provided that no school shall be recognized unless
 1. It has adequate funds to ensure its financial stability and regular payment of salary and allowances to its employees;
 2. It has a duly approved scheme of management;
 3. It has suitable or adequate accommodation and sanitary facilities having regard, among other factors, to the number, age and sex of the pupils attending it;
 4. It provides for approved courses of study and efficient instruction;
 5. It has teachers with prescribed qualifications; and
 6. It has the prescribed facilities for physical education, library service, laboratory work, workshop practice or co-curricular activities.
 - iii. Scheme of management: The managing committee of every recognized school shall make, in accordance with the rules made under this Act and with the previous approval of the appropriate authority, a scheme of management for such school.

2. Staff employment

- a. Delhi School Education Act and Rules 1973:

- i. The Administrator may make rules regulating minimum qualifications for recruitment and conditions of service for employees of recognized private schools.
- ii. Recruitment of employees in recognized private schools is based on the recommendation of the Selection Committee; for the position of head of school: includes educationist nominated by the Director.
- iii. No employee shall be dismissed, removed, reduced in rank, suspended or his service terminated without prior approval of the Director.
- iv. Scales of pay and allowances and other prescribed benefits of the employees of a recognized private school shall not be less than those of the employees of the corresponding status in government schools; failure to comply may result in withdrawal of recognition.

3. Fee regulation

- a. Manager of every recognized school shall file a full statement of fees with the Director before the commencement of each academic session
 - i. No such school shall charge any fee in excess of the specified fee except with the prior approval of the Director;
 - ii. As per the recommendations of the Duggal Committee (1999), Fee Anomaly Committees (FACs) to be set up in each district;
 - iii. No. DE.15/Act/Duggal Com./203/2000/3989-4939, dt. 31.5.2000; and
 - iv. Standard Operating Procedure for FACs issued in 2018 (F.No.DE.15/PSB/MISC./2017/21709-17).

4. Grievance redressal

- a. Delhi School Education Act and Rules 1973: Any employee of a recognized private school who is dismissed, removed or reduced in rank may, within three months from the date of communication to him of the order of such dismissal, removal or reduction in rank, appeal against such order to the Tribunal.
- b. Delhi Right of Children to Free and Compulsory Education Rules, 2011: The Government may prescribe the grievance redressal mechanism for teachers by notification issued from time to time.

5. Admissions

- a. Delhi Right of Children to Free and Compulsory Education Rules, 2011: Every private unaided school must reserve 25% of seats at the entry level for students from economically weaker and socially disadvantaged groups.
- b. Delhi School Education Act and Rules 1973: Head of every recognized unaided school shall regulate admissions 'either on the basis of admission test or on the basis of the result in a particular class or school'.

6. Inspections

- a. Delhi School Education Act and Rules 1973: The Director shall be responsible for the supervision and inspection of all recognized schools, whether aided or not

GUJARAT

Act	Rules
<ul style="list-style-type: none"> • Gujarat Educational Institutions (Regulation) Act, 1984 • Gujarat Educational Innovations Commission Act, 2009 • Gujarat Self-financed Schools (Regulation of Fees) Act, 2017 • Gujarat Secondary and Higher Secondary Education Act, 1972 • Gujarat Compulsory Primary Education Act, 1961 • Gujarat Higher Secondary Schools Services Tribunal Act, 1983 • Gujarat Educational Institutions Services Tribunal Act, 2006 	<ul style="list-style-type: none"> • Right of Children to Free and Compulsory Education Rules, 2012 • Assistant Education Inspector and Assistant Teacher, Class III (Departmental Examination) Rules, 2012

1. Recognition of a private school

- a. Gujarat Educational Institutions (Regulation) Act, [1984](#): No person other than the state government shall, after the commencement of this Act, establish and maintain any educational institution or maintain an existing educational institution unless such educational institution is recognized under this section.
- b. The person making an application for recognition shall satisfy the officer to whom such application is made that
 - i. The educational institution in respect of which such application is made shall supply a need in the State having regard to the type of courses of instruction which the educational institution shall conduct and the existing provision for the same type of courses of instruction by other educational institutions in the State;
 - ii. Such other requirements are connected with the recognition of the educational institution, as may be prescribed.
- c. Recognition under the RTE Act: Every school, other than a school established, owned or controlled by the Union Government, the state government or the local authority
 - i. Run by a society registered under the Societies Registration Act, 1860, or a public trust constituted under any law for the time being in force, or any Company registered under Section 25 of the Companies Act, 1956

2. Staff employment

- a. Right of Children to Free and Compulsory Education Rules, [2012](#): For a teacher, of any school referred to in sub-clause (ii) and (iv) of clause (n) of Section 2, who does not possess the minimum qualifications at the time of commencement of the Act, the management of such school shall enable the teacher to acquire these minimum qualifications within five years from the commencement of the Act.

3. Fee regulation

- a. Gujarat Self-financed Schools (Regulation of Fees) Act, 2017: Fee Regulatory Committee shall determine fees payable by students in self-financed schools; schools charging beyond the following amounts need to obtain approval
 - i. Pre-primary and primary: INR 15,000
 - ii. Secondary and higher secondary (General): INR 25,000
 - iii. Higher secondary (Science): INR 30,000

4. Grievance redressal

- a. Right of Children to Free and Compulsory Education Rules, [2012](#):
- b. The School Management Committee constituted under Section 21 shall be the first level of grievance redressal of teachers of schools specified therein.
- c. The state government shall constitute Tribunals:
 - i. At the state level to settle and decide the disputes between the school management of the schools referred to in sub-clause (iv) of clause (n) of Section 2 and the Government, and
 - ii. At the district or regional level to settle and decide the disputes between school managements and the staff of the schools referred to in sub-clause (iv) of clause (n) of Section 2.

5. Admissions

- a. Gujarat Educational Institutions (Regulation) Act, [1984](#): No recognized educational institution shall admit any student in the educational institution except in accordance with the rules made on this behalf.
- b. Right of Children to Free and Compulsory Education Rules, [2012](#): Every private unaided school must reserve 25% of seats at the entry level for students from economically weaker and socially disadvantaged groups.

HARYANA

Act	Rules
<ul style="list-style-type: none"> • Haryana School Education Act, 1995 • Haryana Board of School Education Act, 1969 • The Punjab Local Authorities (Aided Schools) Act, 1959 • Haryana School Teachers Selection Board Act, 2011 • Haryana Aided School (Security of Service) Act, 1971 	<ul style="list-style-type: none"> • Haryana Aided Schools (Special Pension and Contributory Provident Fund) Rules, 2001 • Haryana School Education Rules, 2003 • Haryana Right of Children to Free and Compulsory Education Rules, 2011

1. Recognition of a private school

- a. Recognition under the RTE Act: Every school, other than a school established, owned or controlled by the Union Government, the state government or the local authority
 - i. Run by a society registered under the Societies Registration Act, 1860, or a trust constituted under the Indian Trusts Act, 1882, or any Company registered under the Companies Act, 1956
- b. Haryana School Education Act, 1995 and Rules 2003:
 - i. The appropriate authority may recognize any private school provided that no school shall be recognized unless
 1. It has adequate funds to ensure its financial stability and regular payment of salary and allowance to its employees;
 2. It has a duly approved scheme of management;
 3. It has suitable or adequate accommodation and sanitary facilities having regards, among other factors, to the number, age and sex of the pupils attending it;
 4. It provides for approved courses of study and efficient instructions;
 5. It has teachers with prescribed qualifications; and
 6. It has the prescribed facilities for physical education, library service, laboratory works, workshop practice and co-curricular activities.
- c. Haryana School Education Rules 2003
 - i. Schools need to obtain permission for establishing a new school before they can seek recognition

2. Staff employment

- a. Haryana School Education Rules 2003: State government may regulate minimum qualifications and methods of recruitment; Managing committee of every school shall enter into a written contract of service with every employee of the school

3. Fee regulation

- a. Haryana School Education Act, 1995 and Rules 2003: Manager of every recognized school shall file a full statement of fees with the Director before the commencement of each academic session
 - i. Manager shall submit the detail of the minimum facilities being provided and the maximum fee charged.
 - ii. No such school shall charge any fee in excess of the specified fee except with the prior approval of the Director.
 - iii. Recognized Unaided School Fund: It includes 'fees, any charges and payment which may be realized by the school for other specified purposes, any other contributions, endowments, gifts and the like'.

4. Grievance redressal

- a. Haryana RTE Rules 2011: The Government shall specify an appropriate grievance redressal system for the teachers.

5. Admissions

- a. Haryana School Education Rules 2003: The state Department 'may regulate admissions to recognized schools or to class thereof in terms of age limit, minimum level of competencies or in order to comply with various provisions of the State/Central Act/laws'.
- b. Haryana RTE Rules 2011: The state government may prescribe the procedure for admission of children under Section 12(1)(c) by official notification issued from time to time.

6. Inspections

- a. Haryana School Education Act, 1995: Every recognized school shall be inspected at least once in each financial year; The Director may give directions to the manager to rectify any defect or deficiency found at the time of inspections or otherwise in the working of the school.
 - i. If the manager fails to comply with any direction given under Rule 189, the Director may take action as he may deem fit including (a) stoppage of aid and (b) withdrawal of recognition, after considering the explanation or report if any given or made by the manager.

JAMMU AND KASHMIR

Act	Rules
<ul style="list-style-type: none"> • Jammu and Kashmir Board of School Education Act, 1975 • Jammu and Kashmir School Education Act, 2002 	<ul style="list-style-type: none"> • Jammu and Kashmir School Education Rules, 2010

Scope of regulation

1. Recognition of a private school

- a. Jammu and Kashmir School Education Act, 2002:
 - i. No private school shall be established, run or maintained without permission, in writing, of the Government or the Competent Authority.
 - ii. Only such private schools as are recognized shall be permitted to function.
 - iii. No private school shall be managed and run by any person other than an educational agency. The Government shall prescribe the procedure for the registration of educational agencies.
 - iv. Every private school shall have to seek the prior permission of the competent authority before adding any higher classes. Any higher classes so added in a school shall require recognition by the Government.

b. Jammu and Kashmir School Education Act, 2002:

- i. Every educational agency shall appoint a Manager to look after the day-to-day running of an administration of the school managed and run by such an educational agency.

c. Jammu and Kashmir School Education Rules, 2010

- i. Every School shall have a Managing Committee representing the local community, and the school shall function under the control and the directions of the committee. The members of the Managing Committee shall not belong to one single family.

2. Staff employment

- a. Jammu and Kashmir School Education Act, 2002:
- b. The academic and other qualifications of the teaching and non-teaching staff in the private schools shall not be lower than those prescribed for corresponding posts in the Government.
- c. All the private schools shall frame and notify their own terms and conditions of service of teaching and non-teaching staff, including conditions related to pay, gratuity, provident fund and age of retirement.

3. Fee regulation

- a. Jammu and Kashmir School Education Rules, 2010
- b. Every private school shall, before the commencement of each academic session, notify, for general information, the details of its fee structure.
- c. The admission fee shall be charged only once, that is upon the first enrolment of the child/student in the school.
- d. There shall be no mid-session revision of the fee.
- e. The school shall affect any revision of fee, in consultation with the parents' association under an intimation to the concerned Director, School Education

JHARKHAND

Act	Rules
<ul style="list-style-type: none"> • Jharkhand Education Tribunal Act, 2005 • Jharkhand Academic Council Act, 2002 • Bihar Non-Government Elementary Schools (Taking Over of Control) Act, 1976 • Bihar High Schools (Control and Regulation Administration) Act, 1960 	<ul style="list-style-type: none"> • Jharkhand Right of Children to Free and Compulsory Education Rules, 2011 • Bihar Taken over Elementary School Teachers' Promotion Rules, 1993

Scope of regulation

1. Recognition of a private school

- a. Recognition under the RTE Act: Every category of schools
 - i. Run by the state government or a society registered under the Societies Registration Act, 1860 (21 of 1860), or a public trust constituted under any law for the time being in force
 - ii. Not run for profit to any individual, group or association of persons

2. Staff employment

- a. Jharkhand RTE Rules 2011: Minimum qualifications laid down by the authority notified by the Central

Government shall be applicable for all categories of schools for appointment of teachers.

3. Fee regulation

- a. Jharkhand Education Tribunal Act, 2007: The government shall regulate the fee to be levied by the private schools. The Executive Committee will approve fees proposed by the management of the school.

4. Grievance redressal

- a. Jharkhand Education Tribunal Act, 2007: A person aggrieved by an order pertaining to any matter within the jurisdiction of a Tribunal may make an application to the Tribunal for the redressal of his grievances.

5. Admissions

- a. Jharkhand RTE Rules 2011: The school shall admit in Grade I, to the extent of 25% of the strength of that class, children belonging to weaker section and disadvantaged group in the neighborhood and provide free and compulsory education till their completion of elementary education.

KERALA

Act	Rules
<ul style="list-style-type: none"> • Kerala Education Act, 1958 	<ul style="list-style-type: none"> • Kerala Right Of Children To Free And Compulsory Education Rules 2010 • Kerala Education Rules, 1959

1. Recognition of a private school

- a. Recognition under the RTE Act: Every school, other than a school established, owned or controlled by the Union Government, the state government or the local authority
 - i. Run by a society registered under the Societies Registration Act, 1860, or a public trust or an educational agency constituted under any law
 - ii. Not run for profit to any individual, group or association of individuals or any other persons
 - iii. Complies with the provisions in the Kerala Education Rules related to area, location and accommodation
- b. Kerala Education Act and Rules 1958: The Government may (a) establish and maintain schools, or (b) permit any person or body of persons to establish and maintain aided schools or (c) recognize any school established and maintained by any person or body of persons.

2. Staff employment

- a. Kerala Education Act and Rules 1958: The Government shall prescribe the qualifications to be possessed by persons for appointment as teachers in Government and private schools.
- b. Kerala Right Of Children To Free And Compulsory Education Rules 2010: The minimum qualifications laid down by the academic authority referred to in sub-rule (1) shall be applicable for every school referred to in clause (n) of Section 2.

3. Grievance redressal

- a. Kerala Right Of Children To Free And Compulsory Education Rules 2010: Managements of schools referred to under sub-clause (iv) of clause (n) of Section 2 shall provide an adequate mechanism for redressal of grievances of teachers.

4. Admissions

- a. Kerala Right Of Children To Free And Compulsory Education Rules 2010: The School shall admit in Grade I (or in pre-school class, as the case may be), to the extent of 25% of the strength of that class, children belonging to weaker section (10%) and disadvantaged group (15%) in the neighbourhood and provide free and compulsory elementary education till its completion.

5. Medium of instruction

- a. Kerala Right Of Children To Free And Compulsory Education Rules 2010: Malayalam is taught as a compulsory language in all classes.

MAHARASHTRA

Act	Rules
<ul style="list-style-type: none"> • Maharashtra Self-Financed Schools (Establishment and Regulation) Act, 2012 • Maharashtra Educational Institutions (Regulation of Fee) Act, 2011 • Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 • Maharashtra Educational Institutions (Prohibition of Capitation Fee) Act, 1987 • Maharashtra Educational Institutions (Transfer of Management) Act, 1971 • Maharashtra Educational Institutions (Management) Act, 1976 • Maharashtra Secondary and Higher Secondary Education Boards Act, 1965 	<ul style="list-style-type: none"> • Maharashtra Right of Children to Free and Compulsory Education Rules, 2011 • Maharashtra Educational Institutions (Regulation of Fee) Rules, 2016 • Maharashtra Self-Financed Schools (Establishment and Regulation) Rules, 2013 • Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981 • Maharashtra Educational Institutions (Transfer of Management) Rules, 1972 • Maharashtra Secondary and Higher Secondary Education Boards Regulations, 1977

1. Recognition of a private school

- a. Recognition under the RTE Act: Every school, other than a school established, owned or controlled by the Union Government, the state government or the local authority
 - i. Run by a society registered under the Societies Registration Act, 1860 (21 of 1860), or under the Bombay Public Trusts Act, 1950 (Bom. XXIV of 1950)
 - ii. Not run for profit to any individual, group or association of individuals or any other persons
- b. Secondary School Code:
- c. Secondary schools only granted recognition if they are 'actually needed in the locality' and do not involve 'any unhealthy competition'

- d. Maharashtra Self-Financed Schools (Establishment and Regulation) Act, 2012:
- e. Permission for setting up a new school or upgrading an existing school
- f. May be withdrawn if a school violates the Act, engages in activities that are 'prejudicial to the interests of the student' or produces poor academic performance

2. Staff employment

- a. Maharashtra Employees of Private Schools (Conditions of Service) [MEPS] Regulation Act, 1977:
- b. The state government may regulate minimum qualifications for recruitment, duties, pay and other conditions
- c. Schools need to fix scales of income and other benefits as prescribed
 - i. Failure to comply with any direction given by the Director may result in the withdrawal of recognition.
 - ii. Schools have to obtain permission from Education Officer/Deputy Director to suspend an employee.
 - iii. In cases of 'alleged misconduct, misbehaviour of a serious nature or moral turpitude', the Director may revise the findings of the Inquiry Committee if he 'is of the opinion' that it has unreasonably exonerated an employee.

3. Takeover of management

- a. Maharashtra Educational Institutions (Transfer of Management) Act, 1971
- b. State government has the power to transfer the management of a private school to a society if 'it is of the opinion' that it is in the 'public interest'
- c. The Society is supposed to consist of officers, among other members, from the Education Department as nominated by the state government.
- d. Maharashtra Educational Institutions (Management) Act, 1976:
- e. The Director of Education can take over the management of a school if he is 'satisfied' that the school is acting in a manner detrimental to the public interest for a period not exceeding three years.

4. Fee regulation

- a. Maharashtra Educational Institutions (Prohibition of Capitation Fee) Act, 1987:
- b. Schools cannot collect capitation fee: 'any amount, by whatever name called, whether in cash or kind, in excess of ... prescribed ... rates of fees regulated under Section 4'
- c. Section 4: '... State government [shall] regulate the tuition fee or any other fee that may be received or collected by any educational institution for admission to, and prosecution of study...'
 - i. Any officer not below the rank of Deputy Director authorized by the state government may enter any institution belonging to the Management of a school that is suspected of charging a capitation fee and 'search and inspect any records ... and seize any such records ...'
- d. Maharashtra Educational Institutions (Regulation of Fee) Act, 2011:

- e. Management has to submit a fee proposal to the Executive Committee, composed of parents, teachers and school management, for approval.
- f. Parents can raise a complaint against the proposed fee hike only after meeting a 25% quorum.
- g. The DFRC may authorize any officer not below the rank of Education Officer/Inspector to enter any premises belonging to the Management and 'search, inspect, and seize' any relevant records.

5. Admissions

- a. Maharashtra RTE Rules 2011: The school shall give admission in Grade I, to the extent of 25% of the strength of that class, children belonging to weaker section and disadvantaged group in the neighbourhood and provide to them free and compulsory elementary education till its completion. Provided, further that in the case of pre-primary classes also, this form shall be followed.

NAGALAND

Act	Rules
<ul style="list-style-type: none"> • Nagaland Board of Secondary and Higher Secondary Education Act, 1973 	<ul style="list-style-type: none"> • Nagaland Right of Children to Free and Compulsory Education Rules, 2010

1. Recognition of a private school

- a. Recognition under the RTE Act: Every school, other than a school established, owned or controlled by the Union Government, the state government or the local authority
 - i. Run by a society registered under the Societies Registration Act, 1860, or a public trust constituted under any law
 - ii. Not run for profit to any individual, group or association of individuals or any other persons

2. Staff employment

- a. Nagaland Right of Children to Free and Compulsory Education Rules, 2010: The minimum qualifications laid down by the Academic Authority, referred to in sub-rule (l) of the above. be applicable for every school referred to in clause (n) of Section 2

TELANGANA

Act	Rules
<ul style="list-style-type: none"> • Telangana Education Act, 1982 • Telangana School Education Management (Community Participation) Act, 1998 • Telangana Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983 • Telangana (Compulsory Teaching and Learning of Telugu in Schools) Act, 2018 • Telangana Intermediate Education Act, 1971 • Telangana Private Educational Institutions Grant-In-Aid (Regulation) Act, 1988 • Telangana Private Educational Institutions Maintenance Grant (Regulation) Act, 1995 • Telangana Private Aided Educational Institutions Employees (Regulation of Pay) Act, 2005 • Telangana Educational Service Untrained Teachers (Regulation of Services and Fixation of Pay) Act, 1991 	

1. Recognition of a private school

- a. Recognition under the RTE Act: Every school, other than a school established, owned or controlled by the Union Government, the state government or the local authority
 - i. Run by a society registered under the Societies Registration Act, 1860, or a public trust constituted under any law for the time being in force
 - ii. Not run for profit to any individual, group or association of individuals or any other persons

b. Andhra Pradesh Education Act, 1982:

- i. The competent authority shall, from time to time, conduct a survey as to identify the educational needs of the locality under its jurisdiction, and notify through the local newspapers calling for applications from the educational agencies desirous of establishing educational institutions.
- ii. Any educational agency, including local authority or registered body of persons intending to establish an institution imparting education, open higher classes in an institution imparting primary education, upgrade any such institution into a high school or open new courses (Certificate, Diploma, Degree, Post-Graduate Degree Courses, etc.), may make an application for the grant of permission.
- iii. Any educational agency applying for permission shall, before the permission is granted, satisfy the authority concerned that there is a need for providing educational facilities to the people in the locality and adequate financial provision for continued and efficient maintenance of the institution as prescribed by the competent authority, and the institution is proposed to be located in sanitary and healthy surroundings.
- iv. The competent authority may, by order in writing, grant recognition in respect of any institution imparting education or for a higher class in any such institution, permitted to be established under Section 20 subject to such conditions as may be prescribed in regard to accommodation equipment, appointment of teaching staff, syllabi, textbooks and other related matters.
- v. On and from the commencement of the Andhra Pradesh Education (Amendment) Act, 1987, no individual shall establish a private institution.

2. Staff employment

- a. Telangana Education Act, 1982: Recognition of a school may be withdrawn if a school employs or continues to employ any teacher whose certificate has been cancelled or suspended or arbitrarily removes a teacher or fails to comply with the orders of the competent authority.
- b. Telangana Education Act, 1982: No teacher or member of the non-teaching staff employed in any private institution shall be dismissed, removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

3. Fee regulation

- a. Telangana Educational Institutions (Regulation of Admissions and Prohibition of Capitation Fee) Act, 1983: Collection of any capitation fee by any educational institution or by any person in charge of or is responsible for the management of the institution is hereby prohibited.
- b. Telangana Educational Institutions (Regulation of Admissions and Prohibition of Capitation Fee) Act, 1983: It shall be competent for the Government, by notification, to regulate the tuition fee or any other fee that may be levied and collected by any educational institution in respect of each class of students.

4. Admissions

- a. Telangana Educational Institutions (Regulation of Admissions and Prohibition of Capitation Fee) Act, 1983: Admission into educational institutions shall be made on the basis of either the marks obtained in the qualifying examination or the ranking assigned in the entrance test conducted as prescribed.

5. Medium of instruction

- a. Telangana (Compulsory Teaching and Learning of Telugu in Schools) Act, 2018: Schools must teach students Telugu from Classes I to X.

UTTAR PRADESH

Act	Rules
<ul style="list-style-type: none"> • U.P. Self-Financed Independent Schools (Fee Regulation) Act, 2018 • U.P. Educational Institutions (Taking Over of Management) Act, 1976 • Intermediate Education Act, 1921 • U.P. Educational Institutions (Prevention of Dissipation of Assets) Act, 1974 • U.P. Secondary Education Services Selection Board Act, 1982 • Uttar Pradesh State Open School Board Act, 2008 • U.P. Prohibition of Ragging in Educational Institutions Act, 2010 • U.P. High Schools And Intermediate Colleges (Payment Of Salaries Of Teachers And Other Employees) Act, 1971 • U.P. Junior High Schools (Payment of Salaries of Teachers and other Employees) Act, 1978 	<ul style="list-style-type: none"> • Uttar Pradesh Right of Children to Free and Compulsory Education Rules, 2011 • Rules of the U.P. School and College Teachers Gratuity Fund (1964)

1. Recognition of a private school

- a. Recognition under the RTE Act: Every school, other than a school established, owned or controlled by the Central Government, state government or local authority
 - i. Run by a society registered under the Societies Registration Act, 1860 (21 of 1860), or a public trust constituted under any law for the time being in force
 - ii. Not run for profit to any individual, group or association of individuals or any other persons

2. Staff employment

- a. Uttar Pradesh RTE Rules 2011
- b. Minimum educational qualifications for teachers, laid down by an authority, authorized by the Central Government, shall be applicable for every school referred to in Clause (n) of Section 2.

- c. First grievance redressal of teachers shall be at the School Management Committee level constituted under Section 21 and thereafter at the local authority level.

3. Fee regulation

- a. U.P. Self-Financed Independent Schools (Fee Regulation) Act, 2018
- b. Recognized School shall determine its fee structure ... for different classes/grades/school levels
- i. Operational expenses, augmentation of facilities and expansion of infrastructure 'generate a reasonable surplus to be utilized for the development of educational purposes'
- c. Permitted fee increase is equivalent to an increase in teacher salary but cannot exceed CPI + 5%
- d. Dispute resolution: District Fee Regulatory Committee

4. Performance assessment

- a. Uttar Pradesh RTE Rules 2011
- b. State Council of Educational Research and Training
- c. 'Performance of schools shall be assessed independently at least once a year through a departmental assessment and mandatorily every two years through an assessment conducted by an external agency.'
- i. Grading of each school shall be undertaken each year on the basis of learning outcomes achieved by the students. Based on
- ii. Learning levels, availability of textbooks, opportunities for individual and group work to students, regular correction of work, teacher punctuality and teaching ability, sharing student performance with parents and percentage coverage of the annual curriculum

WEST BENGAL

Act	Rules
<ul style="list-style-type: none"> West Bengal Non-Government Educational Institutions and Local Authorities (Control of Provident Fund of Employees) Act, 1983 West Bengal Board of Secondary Education Act, 1963 West Bengal Primary Education Act, 1973 West Bengal Council Of Higher Secondary Education Act, 1975 West Bengal Prohibition Of Ragging In Educational Institutions Act, 2000 West Bengal Schools (Control of Expenditure) Act, 2005 West Bengal District School Boards Act, 1947 	<ul style="list-style-type: none"> West Bengal RTE Rules 2012

1. Recognition of a private school

- a. Recognition under the RTE Act: Every school, other than a school established, owned or controlled by the Central Government, state government or local authority
 - i. Run by a society registered under the Societies Registration Act, 1860, or a public trust constituted under any law for the time being in force, or by such a company within the meaning of the Companies Act, 1956, whose Memorandum and Articles of Association do not allow it to make profit
 - ii. Not run for profit to any individual, group of individuals or any other persons

2. Grievance redressal

- a. West Bengal RTE Rules 2011: School Management Committee; if redressal not achieved at school-level, then appeal to West Bengal Administrative (Adjudication of School Disputes) Commission

APPENDIX 1

Frequency of discretionary phrases in state legislation

States	Andhra Pradesh	Delhi	Gujarat	Haryana	Jammu and Kashmir	Jharkhand	Kerala	Maharashtra	Nagaland	Telangana	Uttar Pradesh	West Bengal
Is satisfied	3	3	4	4	2	0	2	7	0	3	6	2
Has reason to believe	1	1	2	0	1	0	1	0	0	1	0	1
Reasonable opportunity	1	0	2	3	1	3	3	3	0	1	0	0
After due appropriation	0	1	1	1	0	0	0	0	0	0	0	0
May consider necessary	2	3	1	3	3	4	1	2	0	2	4	7
May deem necessary	0	0	1	1	0	0	0	0	0	1	1	0
May deem fit	3	1	1	3	3	0	0	2	0	7	4	3
May think fit	1	6	4	13	1	5	0	7	0	3	6	11
May direct	7	1	1	3	3	1	0	4	0	9	5	5
May be required	1	0	2	2	1	1	0	1	1	0	3	2
May be specified	15	5	12	3	1	2	0	8	0	16	10	13
Public interest	5	0	2	2	0	0	4	13	0	6	4	0
May determine	0	1	5	0	5	1	0	3	0	0	3	5
May prescribe	0	0	0	1	2	0	1	1	0	0	0	3
Total	39	22	38	39	23	17	12	51	1	49	46	52

APPENDIX 2

Methodology for scoring recognition provisions

We conducted a cross-state comparison of recognition norms to identify whether there were checks on the scope of powers exercised by government officials.

SELECTION OF STATE SCHOOL EDUCATION LAWS

- Criteria for selecting laws
 - i. Only laws pertaining to recognition; but not establishment of schools (this is an additional condition that we have not examined)
 - ii. State-notified rules under RTE 2009

ASPECTS ON WHICH THE LAW WAS STUDIED

We analysed how state school education laws fared on three administrative safeguards: due process and principles of natural justice, legislative guidance on discretion, and proportionality and nexus. Of these, the first check is procedural in nature, while the last two are substantive.

Procedural safeguards (five questions)

1. Due process and natural justice: Any State action that takes away an individual's life, liberty or property should follow due process and principles of natural justice. This includes receiving an advance and adequate notice of government action, a reasoned order detailing the motivation behind the particular action, and a reasonable opportunity to be heard before such a deprivation (Minattur [2015](#); Chauhan [1995](#)).

Once the decision is taken, an individual should have a recourse to appeal against it or get it reviewed by an independent authority (Halsbury's

Laws of India [2019](#)).

A check against inaction by bureaucrats is another important safeguard, since a delay in decision-making may have an adverse impact on individuals. In some cases, schools' applications for a Certificate of Recognition remained under review for more than five years (CCS [2019](#)). Laws may check against such delays by prescribing an upper time limit or deadline within which the executive must make a decision.

We ask four questions to check whether the laws or the subordinate rules mandate:

- i. reasons to be given in writing for denying recognition;
- ii. schools to be given an opportunity to be heard before denying recognition;
- iii. a mechanism to appeal against such a denial;
- iv. a time limit within which recognition application must be processed.

Substantive safeguards (two questions)

1. Proportionality and nexus: The proportionality test is to ensure that 'when the government acts, the means it chooses should be well adapted to achieve the ends it is pursuing' (Mathews 2017).

To pass the proportionality test, laws must choose methods that align with their objective and are the least restrictive way to achieve it. To pass the proportionality test, conditions set in the law must also be reasonable (i.e. neither arbitrary nor excessive).

The preamble of law must clearly highlight what it intends to tackle or resolve. A condition that does not have any connection with the objective of the law is arbitrary. A condition that is more restrictive, than is necessary to meet the objective

of the law is excessive. “For instance, the Karnataka Education Act, 1983, aims to improve the quality of education and ensure ‘harmonious development of the mental and physical faculties of students’. To meet this end, one of its provisions prohibits employees of a recognized school from giving private tuition to any individual. Although many argue that private tuitions to some students of the school can compromise the performance of other students, it is not clear why private tuitions to students outside the school are prohibited. This criterion for breach is excessive and prevents an individual from having any other source of livelihood.” (Bedi and Narang forthcoming)

We ask two questions to check:

- i. if laws or their subordinate rules introduce arbitrary conditions for recognition
 - ii. if laws or their subordinate rules introduce excessive conditions for recognition
2. Guidance on discretion: Rule of law requires discretionary powers to be accompanied by certain guidelines. Without guiding norms, ‘it may be difficult to assess whether a particular administrative decision is bona fide and based on merits and proper considerations or is mala fide and motivated by some improper and corrupt consideration’ (Halsbury’s Laws of India 2019).

One way to curb abuse of power is to ensure that the criteria on the basis of which the executive takes decision are laid down in the law itself. For instance, laws must clearly enlist the criteria based on which the executive should grant approvals or impose a penalty. Clear mention of the criteria in laws helps introduce predictability. For instance, a school owner must know the criteria they have to meet to get recognized.

We ask one question to check whether the conditions for granting recognition to schools are listed in either the law or the subordinate rules.

SCORING METHOD

- Nature of scoring: Penalty scoring (not reward scoring)
 - » For procedural questions: –1 if a safeguard is not instituted; 0 if the safeguard is introduced (in either the parent act or the subordinate legislation)
 - » For substantive questions: –1 for each arbitrary or excessive condition introduced; 0 if no arbitrary or excessive condition is introduced (in either the parent act or the subordinate legislation)
- Obtaining an aggregate score for states
 - » To ensure procedural and substantive safeguards have equal weightage, we take the lowest common denominator.
 - » Step 1: We sum the scores for procedural safeguards (on five questions) and substantive safeguards (on two questions) separately.
 - » Step 2: Since there are five questions to check for procedural safeguards and two questions to check for substantive safeguards, we multiply the score for procedural safeguards by two and substantive safeguards by five.
 - » Step 3: We obtain the grand total score for each state by summing up the scores for individual laws (pertaining to that state).

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Ease of operations for budget private schools in India

SUBMITTED BY CENTRE FOR CIVIL SOCIETY

Nearly 50% of all students are enrolled in schools run by non-state actors in India. From 2010 to 2014, enrollment in private schools rose by 16 million (Kingdon 2020). Of these private schools, 25% charged a monthly fee of less than \$2.65 (INR 200) and 50% charged less than \$6.63 (INR 500). These schools, known as budget private schools, low-cost private schools or affordable private schools, account for 70%–85% of student enrollment in India's most populated states (Kingdon 2020; CSF 2020). There are different definitions of what constitutes these low-fee schools run by non-state actors because of the wide variety in the private schooling sector. Definitions include schools that are financed entirely by tuition fees and do not charge monthly fees beyond the daily labourer wage or those that are not solely dependent on government financing (Alam and Tiwari 2021).

