

Governance challenges in K-12 education in India

Evidence from Maharashtra, Delhi, Haryana, Jharkhand and Uttar Pradesh legislation

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Status check on regulatory framework for private schools

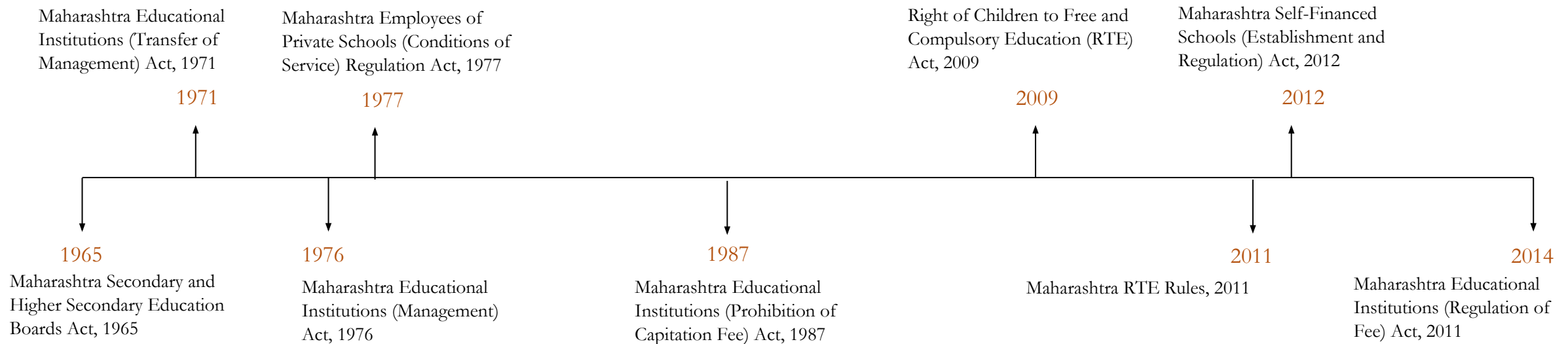
Laws attempt to solve problem of accountability for parents

- Limited understanding of the supply-side
 - Powers vested in the State and powers given to parents for ensuring accountability
 - But no focus on incentives driving schools or comprehension of what causes bad action
- Missing accountability for functionaries
 - Lack of clarity on who does what (Centre for Civil Society 2019)
 - Multiple functions collapsed into one official, including regulation and service delivery (World Bank 2004, Posani and Aiyar 2009, Aiyar et. al 2010, Pritchett 2018, Centre for Civil Society 2019)
- Sparse research on *de jure* regulatory environment for private schools in India
 - World Bank 2014; Vidhi Centre for Policy 2017; Centre for Civil Society 2019
- We look at Maharashtra, Delhi, Haryana, Jharkhand, and Uttar Pradesh

Maharashtra

State legislation governing schools

7 state Acts (with accompanying rules) + Secondary School Code



What does it take to open a private school?

Dual-recognition system

- RTE Act 2009, Maharashtra RTE Rules 2011, and Secondary School Code
 - Recognition to operate
 - Secondary schools only granted recognition if they are “actually needed in the locality” and do not involve “any unhealthy competition”
- Maharashtra Self-Financed Schools (Establishment and Regulation) Act 2012
 - Permission for setting up a new school or upgrading an existing school
 - May be withdrawn if school violates Act, engages in activities that are “prejudicial to the interests of the student” or produces poor academic performance

How do private schools hire employees?

Require approvals from the state Department of Education

- Maharashtra Employees of Private Schools (Conditions of Service) [MEPS] Regulation Act 1977
 - State Government may regulate minimum qualifications for recruitment, duties, pay and other conditions
 - Schools need to fix scales of pay and other benefits as prescribed
 - Failure to comply with any direction given by the Director may result in withdrawal of recognition
 - Schools have to obtain permission from Education Officer/Deputy Director to suspend employee
 - 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.
 - Private aided schools are not allowed to retrench teachers until they are “absorbed” by the Education Officer/Deputy Director

How is management of private schools regulated?

State Government can transfer/take over management if in “public interest”

- Maharashtra Educational Institutions (Transfer of Management) Act 1971
 - 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”
 - The Society is supposed to consist of officers, among other members, from the Education Department as nominated by the State Government.
- Maharashtra Educational Institutions (Management) Act 1976
 - 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.
- What qualifies as ”public interest”?
 - Not defined in either of the laws
 - Jeejau Shikshan Sanstha vs State of Maharashtra, [2010](#): “The public interest does not mean interest of the persons running school.”
 - Includes the need to run school in a particular locality; convenience of the traveling students; non-availability of other schools in the adjoining area; educational atmosphere with other facilities

How are fees regulated for private schools?

Capitation fee prohibited and 25% quorum for parents to raise complaints

- Maharashtra Educational Institutions (Prohibition of Capitation Fee) Act 1987
 - 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”
 - 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...”
 - Any officer not below the rank of Deputy Director authorised by the State Government may enter any institution belonging to the Management of a school that is suspected of charging capitation fee and “search and inspect any records...and seize any such records...”
- Maharashtra Educational Institutions (Regulation of Fee) Act 2011
 - Management has to submit fee proposal to the Executive Committee, composed of parents, teachers and school management, for approval
 - Parents can raise a complaint against proposed fee hike only after meeting a 25% quorum
 - The DFRC may authorise 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

Delhi

State legislation governing schools

2 state Acts (with accompanying rules) + School Manual



What does it take to open a private school?

Dual-recognition system

- Delhi School Education Act and Rules 1973
 - Essentiality Certificate: intimate Administrator of intention to establish a school
 - Only mentioned in Delhi School Education Rules 1973; not present in the Act
 - The Administrator “may...inform the person...whether or not opening of the proposed new school would be, in the public interests”
 - No clear definition of what is public interest
 - Rule 44(3): ... Provided that the Administrator shall, if he is of opinion that the **number of schools existing** in the Zone where the new school is proposed to be 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...”
 - *No. F.SRC/H.Q./1999-2000/1854-95, dt. 12.9.2000*
 - Intimation not required for up to Class V
 - District authorities “shall specifically state whether or not the school **serves a real need of the locality** and also whether or not it is **likely to affect adversely the enrolment** in a nearby school which has already been recognized by the appropriate authority”

What does it take to open a private school?

Dual-recognition system

- Delhi School Education Act and Rules 1973
 - Recognition not mandatory for opening a private school
 - Vaguely worded conditions:
 - “building or other structure in which the school is carried on, its surroundings, furniture and equipment are **adequate** and **suitable** for an educational institution”
 - “arrangements...meet **adequately** the requirements of health and hygiene”
 - Facilities to be provided by school: physical education; library service; laboratory work; workshop practice; co-curricular activities (*No. F./DE/Act/Recog/2002-2003/02-50, dt. 2.1.2003*)
- RTE Act 2009 and Delhi RTE Rules 2011: mandatory recognition
 - Input-centric norms restricting innovation: teacher qualifications, infrastructure requirements (playground, library)

What does it take to open a private school?

Gain approval for scheme of management

- Delhi School Education Act and Rules 1973
 - Managing committee of every recognised 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.
 - Includes term of office, manner of elections, and duties, powers, responsibilities of managing committee

How do private schools hire employees?

Recommendation of the Selection Committee

- Delhi School Education Act and Rules 1973
 - The Administrator may make rules regulating minimum qualifications for recruitment and conditions of service for employees of recognised private schools
 - Recruitment of employees in recognised private schools is based on the recommendation of the Selection Committee
 - For the position of head of school: includes educationist nominated by the Director
 - No employee shall be dismissed, removed, reduced in rank, suspended nor his service terminated without prior approval of the Director
 - Scales of pay and allowances and other prescribed benefits of the employees of a recognised private school shall not be less than those of the employees of corresponding status in government schools
 - Failure to comply may result in withdrawal of recognition

How is management of private schools regulated?

Administrator can take over, if acting against the interest of school education

- Delhi School Education Act and Rules 1973

- Whenever the Administrator is satisfied that any school, **whether recognised or not**, has “neglected to perform any of the duties imposed on it by or under this Act or any rule made thereunder and that it is expedient in the interests of school education”, he may take over the management of such school for a period not exceeding three years, after giving it a reasonable opportunity of showing cause.
 - Managing committee or manager may appeal to the Administrator, within three months of take over

How are fees regulated for private schools?

Orders issued when deemed necessary

- Delhi School Education Act and Rules 1973
 - Manager of every recognised school shall file a full statement of fees with the Director before the commencement of each academic session
 - No such school shall charge any fee in excess of the specified fee except with the prior approval of the Director
- As per the recommendations of the Duggal Committee (1999), Fee Anomaly Committees (FACs) were to set up in each district
 - *No. DE.15/Act/Duggal Com./203/2000/3989-4939, dt. 31.5.2000*
 - Standard Operating Procedure for FACs issued in 2018 ([F.No.DE.15/PSB/MISC./2017/21709-17](#))

How are admissions regulated in private schools?

Procedure set by the state Department

- Delhi School Education Act and Rules 1973
 - Head of every recognised unaided school shall regulate admissions “either on the basis of admission test or on the basis of result in a particular class or school”
- Delhi 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.

How are inspections conducted in private schools?

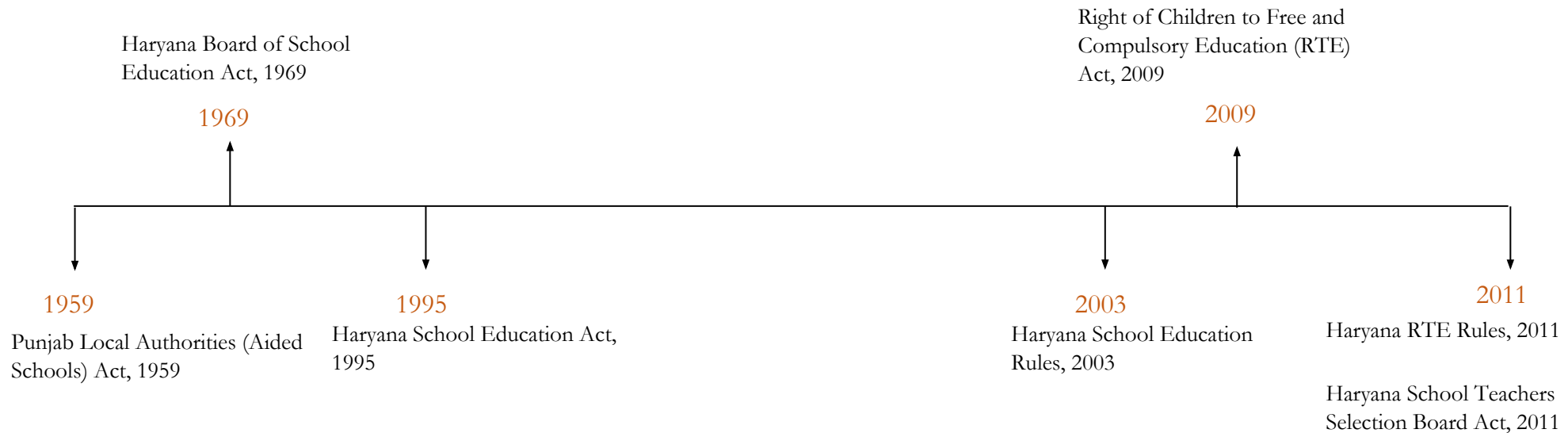
Director responsible for supervising inspections of private schools

- Delhi School Education Act and Rules 1973
 - Every recognised 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.
 - If the manager fails to comply with any direction given under 24(3), the Director may take action as he may think fit including (a) stoppage of aid, (b) withdrawal of recognition, after considering the explanation or report if any given or made by the manager.

Haryana

State legislation governing schools

4 state Acts (with accompanying rules)



What does it take to open a private school?

Requirements compounded by state laws

- Haryana School Education Act 1995 and Rules 2003
 - Recognition not mandatory
 - Allows for registration under societies, trusts, or “company registered under the Companies Act, 1956” + scheme of management made under their relevant rules
 - Building safety certificate obtained from Public Works Department/municipality/registered engineer + Fire certificate shall be obtained from local fire authority
 - Provision of electricity fitting and electric fans in each classroom + at least one computer with modem and internet connectivity
- Haryana School Education Rules 2003
 - Schools need to obtain permission for establishing a new school before they can seek recognition
 - “No school in the State can function, establish or start classes without the prior approval or permission of the Director”.
- RTE Act 2009 and Haryana RTE Rules, 2011: mandatory recognition

How do private schools hire employees?

Interventions from state Department

- 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 school

How are fees regulated for private schools?

Orders issued when deemed necessary

- Haryana School Education Act 1995
 - Manager of every recognised school shall file a full statement of fees with the Director before the commencement of each academic session.
 - “Manager shall submit the detail of minimum facilities being provided and the maximum fee charged” (Haryana School Education Rules 2003)
 - No such school shall charge any fee in excess of the specified fee except with the prior approval of the Director.
 - Recognised Unaided School Fund
 - Include “fees, any charges and payment which may be realised by the school for other specified purposes, any other contributions, endowments, gifts and the like

How are admissions regulated in private schools?

Procedure set by the state Department

- Haryana School Education Rules 2003
 - The state Department “may regulate admissions to recognised 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”
- 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.

How are inspections conducted in private schools?

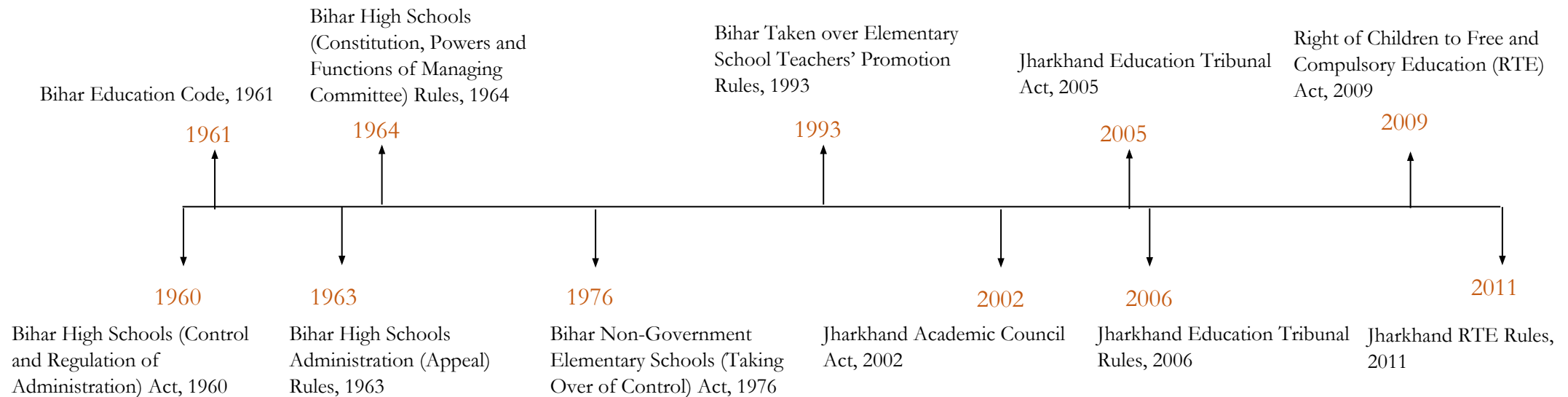
Director responsible for supervising inspections of private schools

- Haryana School Education Act 1995
 - Every recognised 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.
 - 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, (b) withdrawal of recognition, after considering the explanation or report if any given or made by the manager.

Jharkhand

State legislation governing schools

4 state Acts (with accompanying rules) + Bihar Education Code



What does it take to open a private school?

Dual-recognition system

- RTE Act 2009 and Jharkhand RTE Rules 2011: mandatory recognition
 - Specifies that schools of all categories (including government) need recognition
 - School **run by the State Government** or society registered under the Societies Registration Act, 1860 or public trust constituted under any law
- Bihar High Schools (Control and Regulation of Administration) Act 1960
 - Board of Secondary Education may grant recognition to “high schools”
 - May withdraw if “not functioning in a way conducive to the maintenance of discipline...and is not carrying out directions of the Board or administering the finances of such school properly”

How do private schools hire employees?

Meet minimum qualifications for government and private schools

- 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

How is management of private schools regulated?

Take-over for better organisation and development of education

- Bihar Non-Government Elementary Schools (Taking Over of Control) Act 1976
 - “Elementary schools administered by any public or private undertakings shall be taken over by the State Government by publication of a notification in the *official gazette*” from the date of publication.
 - Conditions for warranting take-over are not given

How are school-related grievances addressed?

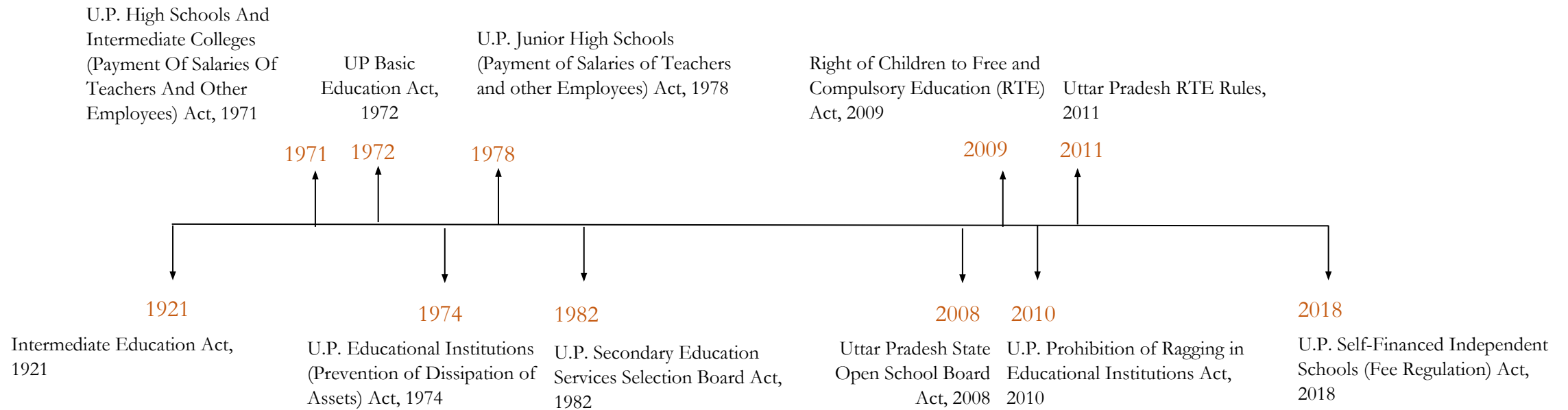
State Education Tribunal

- Jharkhand Education Tribunal Act 2006
 - Tribunal shall not be bound by the procedure-laid down in the Code of Civil Procedure, 1908, but “shall be guided by the principles of natural justice”
 - Shall have “power to regulate its own procedure including the fixing of places and time of its inquiry and whether to sit in public or in private.”
 - Shall adjudicate over matters regarding recruitment, grievances of employees and parents against management, and those referred to by the State Government
- Jharkhand RTE Rules 2011
 - State Commission for Protection of Child Rights set up Child Help Line
 - District Education Appellate for disposal of case related to violation of the right to education
 - Local Authority and School Management Committee at Panchayat and school level, respectively.

Uttar Pradesh

State legislation governing schools

9 state Acts (with accompanying rules)



What does it take to open a private school?

Recognition under the RTE Act 2009

- RTE Act 2009 and Uttar Pradesh RTE Rules 2011: mandatory recognition
 - Every school, *other than a school established, owned or controlled by the Central Government, State Government or local authority*, established before the commencement of the Act shall make a self-declaration to the concerned Zila Shiksha Adhikari

How do private schools hire employees?

Meet minimum qualifications for government and private schools

- Uttar Pradesh RTE Rules 2011
 - Minimum educational qualifications for teachers, laid down by an authority, authorised by the Central Government, shall be applicable for **every school** referred to in Clause (n), Section 2
 - First grievance redressal of teachers shall be at the School Management Committee level constituted under Section 21 and thereafter at the local authority level

How are fees regulated for private schools?

Hikes capped at CPI + 5%

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

How is school performance assessed in Uttar Pradesh?

Annual performance assessment

- Uttar Pradesh RTE Rules 2011
 - State Council of Educational Research and Training
 - “Performance of schools shall be assessed independently atleast once a year through a departmental assessment and mandatorily every two years through an assessment conducted by as external agency.”
 - Grading of each school shall be undertaken each year on the basis of learning outcomes achieved by the students. Based on
 - 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, percentage coverage of annual curriculum

What is common across all states

Intrusive regulation restricting innovation and choice in the sector

- Private schools need to gain recognition to operate
- Private schools can only hire employees that meet minimum qualifications/after obtaining permission from state Department
- Private schools need to operate in “public interest” or “in the interest of school education” to avoid being taken over by the state government
- Private schools are subject to fee caps that may not account for investment in new facilities or expansion
- No systematic dispute resolution system
 - Little clarity on resolution route
 - Lack of distinction between disputants (parents, schools, government)
 - Natural justice absent from process

World Bank framework for private school regulation

Systems Approach for Better Education Results-Engaging the Private Sector

Policy Goals	Policy Indicators	States
1 Encouraging innovation by providers	Local decision-making, fiscal decentralisation, autonomy over managing resources, personnel, and educational content	<i>State intervention on decisions over fees and personnel hiring</i>
2 Holding schools accountable	Autonomy for outcomes, parameters for quality and access, equally applicable standards for all service providers	<i>Government and private schools held to different standards; limited checks on quality; no autonomy for outcomes</i>
3 Empowering all parents, students, and communities	Informed parents and communities	<i>Limited emphasis on providing parents with information on school and child performance</i>
4 Promoting diversity of supply	Facilitating entry for more diverse set of providers	<i>Restrictions on type of schools that can enter the market</i>

Vidhi Centre framework for private school regulation

Modified SABER-EPS for Indian context

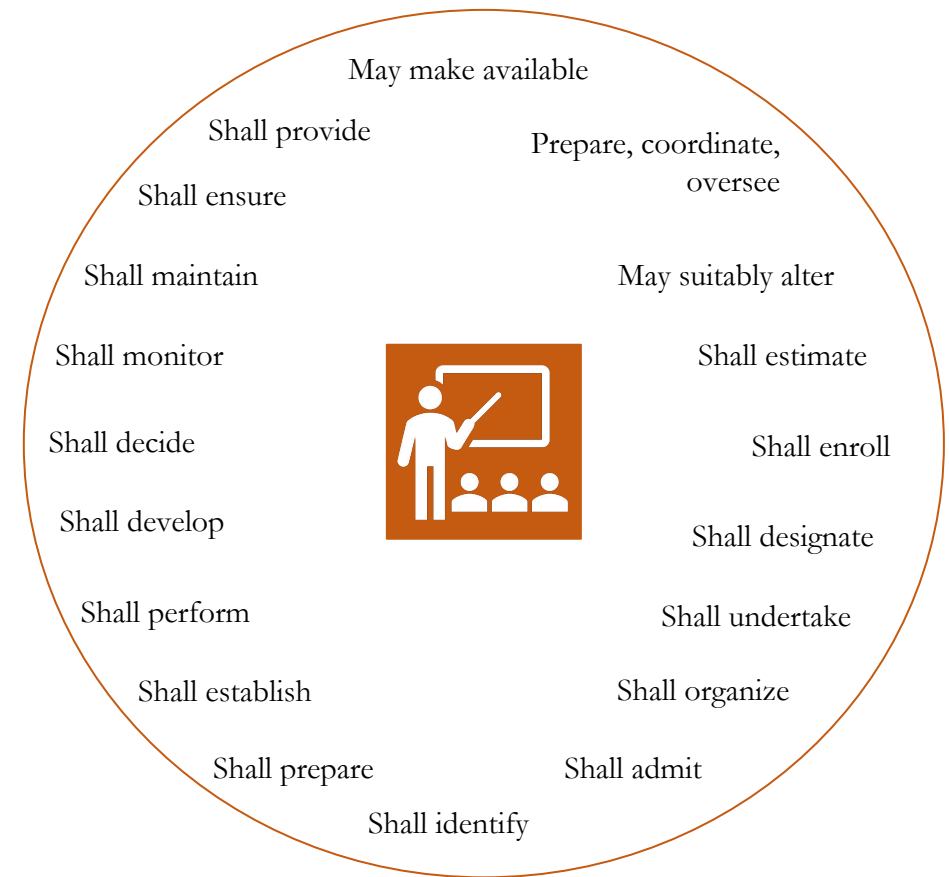
	Policy Goals	Policy Indicators	States
1	Ease of opening a school	Who can open a school; land ownership and land size norms; building and infrastructure norms; associated costs	<i>Input-centric requirements and restrictive ownership structures</i>
2	Operational autonomy	Selection and salary of employees; curriculum; admission procedures; fees charged	<i>State intervention on all aspects</i>
3	Accountability and transparency	Minimum learning standards; inspections; grievance redress; disclosure requirements	<i>No clarity on learning levels or dispute resolution; limited emphasis on disclosures</i>
4	Empowering parents and community	Information sharing; parent-teacher associations	<i>Limited emphasis on providing parents with information on school and child performance</i>

Legislation silent on accountability for government schools

Comparing regulatory provisions for government with private schools



Provisions related to operations of private schools



Provisions related to operations of government schools

Responsibilities delegated to state Departments

What each functionary is up to

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	✓	✓	✓	✓	✓	-

What should we take away from this?

Need for unified Model State Education Code and independent regulator

- Deeply prescriptive norms
- Absent difference in vocabulary between public and private
 - Translates into absent difference in goals between the two
- Lack of administrative boundaries
 - When rules are enforced, penalties will be imposed differently in the case of public and private
- Violation of natural justice
 - What is a grievance, who do you take the grievance do, who do you challenge decisions with?
- Dominant market player and their agents write the rules for competitors

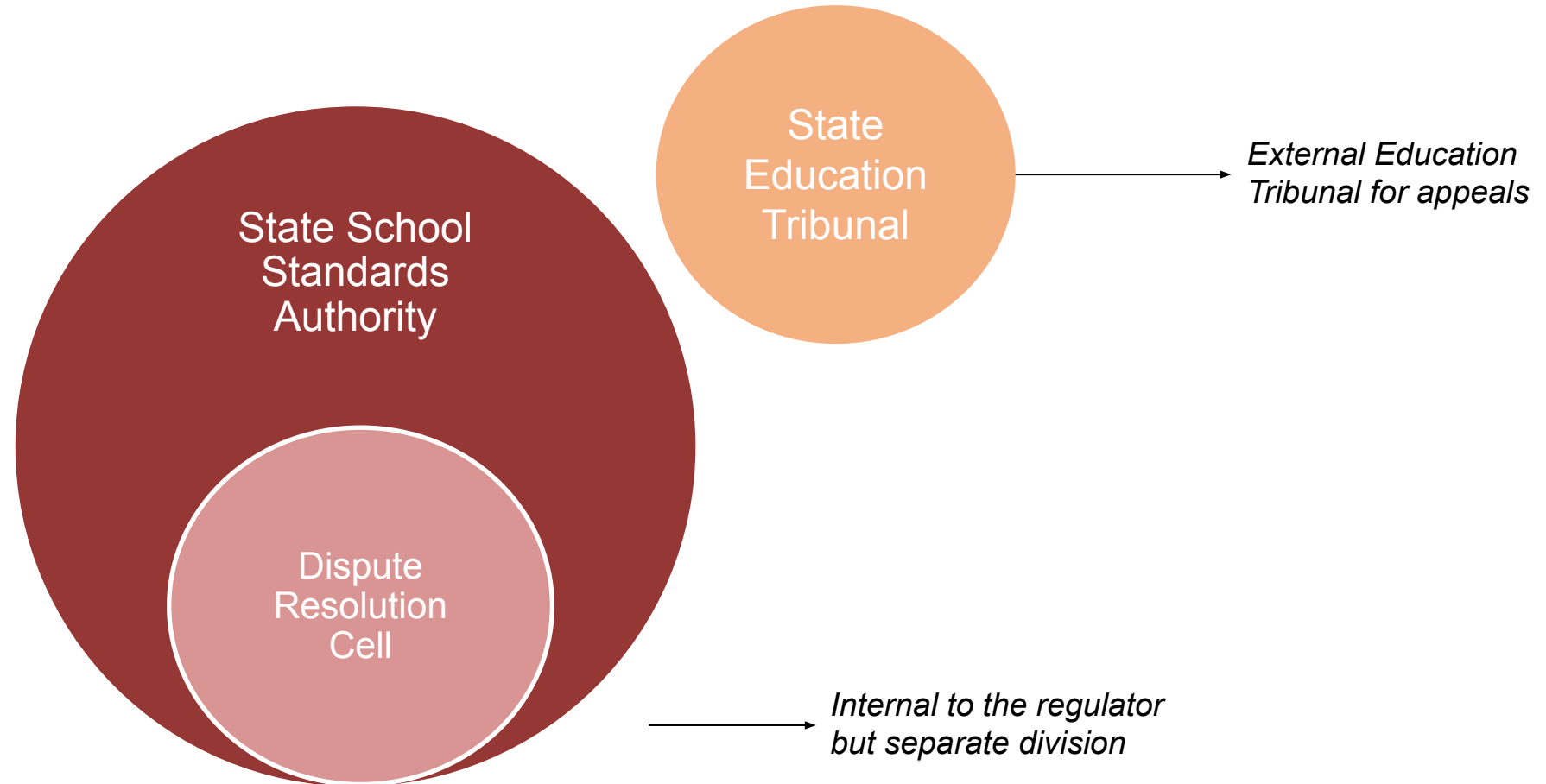
What would ideal separation look like?

Uncoupling functions of the government

- Fused functions result in perverse incentives and outcomes
 - Poor regulatory hygiene, conflict of interest, low value for spending, principal-agent misalignment
- *Way forward:* separate regulatory and service delivery functions of the government
 - Institute an independent state-level school regulator
 - Introduce third-party assessments or other accreditation mechanisms
 - Decentralise grievance redressal with due process safeguards

What would ideal separation look like?

Uncoupling functions of the government



Thank you!

For any queries or comments,
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