



The Right to Education- private schools vs. public schools: A legal overview

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ABSTRACT

In light of the recent rapid increase in the number of private schools in India as well as the number of students being enrolled in them, one cannot help but wonder about the reasons for this unprecedented growth of the private schools. Firstly, it describes the Indian educational philosophy with respect to individual growth and collective progress of the society. Secondly, it examines the conditions that led to this growth of private schools as a result of the failure of implementation of the right to education in terms of access to schools and teacher qualifications, training, salaries, and attendance. Thirdly, it analyses the Right to Education Act, 2009 in light of the requirement of government regulation in private schools to maintain the quality of education as set by the Act. Fourthly, it proposes self-regulatory mechanisms that would remove the information asymmetry regarding the working of private schools between these schools and the government to better the overall learning process. Lastly, the paper provides few suggestions to improve the quality of education and proposes the setting up on an independent body for as a mechanism to regulate the working of private schools.

Keywords— Private schools, RTE, Teacher qualifications, Self-regulatory mechanism

1. INTRODUCTION

The system of education in India has always been greatly influenced by religious scriptures, social and cultural traditions. In the ancient period, education was meant to achieve overall development of individuals including vocational training and accountability towards national integration. It placed an emphasis on the role of the guru, or teacher in this process of gaining knowledge. During the medieval period, the Islamic culture developed a curriculum for cultural, social and economic cohesion and placed emphasis on the practical skills required in everyday life. [1]

The central idea of education before the British era evolved around the need of basic skills that were derived from culture and religion in order to, not only, better oneself, but also promote the wellbeing of the entire community.

It was only after the British colonisation that a formal system of education began to be established in India, to further their goals as imperialists. [2] Education was an essential part of an individual's growth. The individual, in turn, would reap the benefits of such education provided to them, by using it to prosper in their emotional, social, physical and economic aspects. Their training would help them contribute to an efficient workforce that would benefit their community and the country as a whole. Therefore, it becomes essential for the State to play an active role in monitoring and regulating the mechanisms and structures of education that is dispensed in the country. This helps promote a common goal of the prosperity of the country through the welfare of its citizens.

After attaining independence, India was in grave need to improve the quality of education being provided, as well as reduce disparities in terms of access to education between men and women, as well as in rural and urban areas. Therefore, popularisation of education, and introducing "free and compulsory education" to all children up to the age of 14 years was listed as a goal under the Directive Principles of the State Policy. [3]

Post-2009, the duty to provide free and compulsory primary education to children was meant to rest upon schools, run or aided by appropriate governments and local authorities through the provision of education in the Right to Education Act, 2009 (herein, known as the Act). This was enacted in order to implement The Constitution (Eighty-sixth Amendment) Act, 2002. The Act specified that it aimed to provide every child under the age of 14 years the right to free and compulsory education. It also stated that the education was to be departed was in congruence with the values enshrined in the Constitution of India. [4]

The Act recognises 4 main types of schools:

1. Government/local schools solely run by the appropriate government and local authorities
2. Specified category of schools recognised due to its distinct characters
3. Private aided schools receiving partial or complete aid to meet their expenses
4. Private schools that are completely unaided. [4]

In the last decade, Indian rural and urban areas have witnessed a sharp rise in the number of private schools as well as the number of students being enrolled in them. In 2001, the World Bank Edstats reported that the 15.4% [5] of the total enrolled students in primary education were studying in private schools as compared to 25% in 2011 [6]. Almost 30% of villages have access to private schools within the village boundaries itself. [7]

Private unaided schools seem to have inherent appealing characteristics as compared to government schools. By charging a nominal fee, they provide proper infrastructural facilities such as privately owned buildings, open fields, libraries, and clean drinking water. [8]

Furthermore, the learning outcomes of students in private unaided schools are significantly higher as compared to government schools. [9] Therefore, it seems a reasonable choice for parents to pay extra fees as compared to a government school in order to achieve better academic results for their children.

The following describes the layout of the paper- the second section analyses the mushrooming of private unaided schools as a consequence of the improper implementation of Right to Education in government as well as aided schools, with respect to access to education and teacher qualifications.

The third section presents the reader with possible models that would help eliminate the information asymmetry between private schools and the government in order to ensure a positive learning growth promoting the objectives of the Right to Education.

Further, I will be drawing conclusions regarding the unprecedented growth of private schools and will be highlighting the needs for a government warranted regulatory mechanism for private schools to uphold the Constitutional Right for primary education.

2. REGULATION OF SCHOOLS UNDER THE ACT

This section will be analysing the growth of private- recognised and unrecognised schools which do not receive any aid from government/local authorities to meet their expenses with government schools.

2.1 Access to education

An important aspect of the UN sustainable development goals includes access to free, equitable and quality primary and secondary education leading to relevant and learning outcomes. To achieve this the Right to Education Act has laid down certain criterion.

S6 of the Act aims to establish schools within prescribed limits that are either run by the government or by the local authorities. These schools, therefore, are government schools. The minimal teacher requirements and infrastructural necessities for these schools are mentioned in the Schedule of the Act. These include provisions for an all-weather building with clean water and separate toilets, meals, libraries, playgrounds and teachers with minimal qualifications to provide primary education. However, the reality reflects a different image. Government schools in rural areas and in Urban slums are poorly equipped with respect to these infrastructural necessities and teacher resources. [10] Only 50% of government schools have electrical supply as compared to 82% of private schools. Apart from this, private unaided schools have fared well in providing its students with clean drinking water, are more accessible and are dramatically better equipped with facilities such as libraries, computers, playgrounds etc. [11]

Another aspect of access to education under the Act is the private-public partnership under S12. This emphasis the relationship between private aided schools and the government where the schools are required to reserve a minimum of 25% of its seats to the weaker and disadvantaged sections of the particular locality. The costs of this would then be reimbursed by the State. [4] However, only 2.88% of schools that provide primary education are aided by the government. [12] Furthermore, there are very few incentives to be recognised under the Act and receive aid from the government. One of the reasons for this is the heavy regulation placed by the government on these schools. Firstly, schools would be unable to derive their profits from one section of their student population, thereby reducing the profit share from academic revenue. [13] Apart from this, private schools charge extra fees for uniforms, books and other extracurricular activities that would not be covered under the RTE. Secondly, the aided school would be required to provide special training to the reserved sections under S4 of the Act thereby incurring extra costs in hiring special teachers or in diverting already available resources into doing so. Thirdly, being recognised under the Act would mean that the private schools would have to adhere to high minimum teacher salaries [3] prescribed by the government, which would inhibit them from expansion activities and profit motivated workings.

This, therefore, is an ideal ground for the development of private schools.

2.2 Teacher requirements

Teachers have a unique role to fulfill as influencers, facilitators, methodologists and are mainly entrusted with the responsibility to create a conducive learning environment in order to improve the quality of education. Apart from basic skills of communication, teachers need to have a learned hand over the subjects that they are required to teach. Thus, there must be a constant endeavor to keep teachers updated on their subject matters as well as be trained in learning methods that are employed in teaching students in government schools as well as aided schools.

S23 of the Act prescribes a minimum qualification requirement that is set by a competent academic authority (in this case, the State Council for Educational Research and Training, herein known as SCERT). However, these rules vary from each state which can prescribe any qualification as a minimum requirement. The section also expands that if a teacher does not possess the given requirement, the authority would be given the power to still admit the teacher, on the proviso that she would be acquiring those qualifications within a period of 5 years.

The crux of the issue lies in the leniency of laws with respect to teacher requirements. It is essential for a teacher to have this minimum knowledge in order to teach effectively and not jeopardize the formative learning years of a child. A research conducted in one of the largest states in India- Madhya Pradesh shows that almost 67% of the total teacher population has any sort of professional training. Minimum qualifications in government schools are only 12 years of education up to higher secondary. [14] In-job training that is required to be provided by the National Council for Educational Research and Training under S23 of the Act seems to be a failed approach as there is no systematic programme in place for teacher training. [3] There is no mechanism that enables the NCERT to investigate regarding the educational requirements of the teacher either. Therefore, S23(2) of the Act which provides a lenient approach can be deemed ineffective as there is no follow up procedure to check the qualification progress of the teacher, neither is there a widespread approach that provides teacher training to teachers who do not possess a minimal requirement. A lacuna that can be noticed in the Act is the lack of sensitization of teachers in private aided schools and in government schools. The Act does provide a list of duties that need to be followed, however, does not provide for any mechanism or training that would help teachers to cope with the additional duties of teaching children from different financial and social backgrounds. This is crucial as a teacher's background and personality influence her students. [15]

The lack of quality can be clearly reflected in the test scores of students in primary schools. Keeping in mind quality of schools, it is noticed that children studying in private schools perform fairly better than that of government schools, however, the overall score is still below 60% which is a government measurement to check the competency of a child. [9]

Parents, therefore, in order to ensure even a slightly higher quality of education, fall into the artifice of English medium private schools over government schools.

2.3 Teacher attendance and salaries

Another important reason for choosing private schools over government schools is the aspect teacher absenteeism.

The schedule provided in the RTE does not mention explicitly that teachers working in government-run schools have to be full time or not. They are simply given the responsibility of working 45 hours a week and that they would have to finish teaching the prescribed curriculum in any manner within a specific period of time.

This brings us to the issue of contract teachers that are hired in government schools that do not have the required qualifications. In Tamil Nadu, it was reported that 73% [16] of all teachers in government schools were contracted teachers who do not have the motivation, nor the incentive that a full-time job provides to teach students. This causes substandard learning and teaching process. Private schools have the flexibility of setting their own salaries for their teachers and are not obliged to follow any governmental prescribed mandate for this purpose. They also have an attendance based system where salaries are drawn based on the number of classes teachers teach. Thus, teachers in such schools have the incentive to draw higher salaries and thereby, resulting in higher working hours and effort. By reducing the costs of teacher salaries, they are able to direct this money in investments such as infrastructure, books and other aspects of student development. [17]

3. SELF-REGULATION MECHANISM- A TOOL TO REDUCE INFORMATION ASYMMETRY

An issue that arises from this unprecedented growth of private schools is the lack of information that the government has about these schools. This includes vital information such as qualification of teachers, admission of students, maintenance of student-pupil ratio and thus a check is required to maintain a uniform system of educational practices throughout the country and to ensure the non-violation of child rights.

A method to ensure that this information is passed on to the government is that of regulatory mechanisms. In the next paragraphs, I will be using the examples of Hyderabad, a city in Telangana as well as that of an association for independent schools in South Africa. Further, I will also be proposing the idea for the creation of an independent body that would help in developing a transparent learning process between students, teachers and the government.

3.1 Online rating system for private schools in Hyderabad

In Hyderabad, Gray Matters Capital has set up a credit rating process that has the primary goal of conducting surveys of private unaided schools and rating them after evaluation. This agency, named M-CRIL (Micro Credit Rating International Limited) is a micro-credit agency that provides schools with ratings on the following 6 criterion:

- Governance and Strategy
- Learning Environment
- Student Academic Achievement
- Parent Engagement
- Financial Systems
- Financial Performance
- Financial Sustainability and viability [18]

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The agency conducts surveys using random samples of students, teachers, parents, and other stakeholders and rates them in comparison with the schools in the same locale.

Initially, this system formulated for parents who were looking to get their children enrolled in private unaided schools and did not have a fair mechanism to evaluate and compare schools to make the best choice.

I propose the use of this mechanism in order to address the problem of information that is unavailable to the government regarding the total number of schools that haven't been recognized under the act. The use of a credit rating body would help in rounding the number of the total number of schools in actuality throughout the country. Apart from this, the government would be able to use this data to find more information regarding the curriculums used in the schools and check if they are in cognizance of the aims mentioned in S29 (2) of the Act.

Use of such a mechanism in government schools as well would give a reality check to the government regarding the subpar conditions of many government-run schools within the country.

Parents, as well as their children, when provided with such ratings and data, would be given the opportunity to make a fair, sound choice while choosing from schools.

3.2 Independent associations for private schools- South Africa

To ensure the quality of education, the Government of South Africa are the rights to check and monitor those who wish to open and operate private schools. The government, here, acts as a bodyguard protecting its citizens from the low quality of education in private schools which would fester if left unregulated. This check acts a quality assurance mechanism on private schools who would maintain such standards as required to avoid the bad publicity that would harm the credibility of the entire sector.

Thus a mechanism, where independent schools form associations and work with the government as a complementary partner in providing quality education to all learners. [19]

The Independent Schools Association of Southern Africa is a body that holds forums to discuss policies and legislation that affect the schools independent from the working of the government. In order for a school to be accepted as a member in this association, an initial quality test is conducted by the heads of the association and only after a positive response, the schools are allowed to become a member. This body has a code called the "Code of Ethical Practices and the Constitution" that lay down rules and standards that are to be followed by member schools.

The association is a brand name in the public, which means that member schools, not only uphold their name in the public but also carry the reputation of belonging to the Association of schools in the country.

Member schools are required to continuously examine themselves based 9 main criterion [20]:

- The basic functionality of the school
- Leadership, Management, Communication
- Governance and Relationships
- The Quality of Teaching and Teacher Development
- Curriculum Provision and Resources
- Learner Achievement
- School Safety, Security and Discipline
- School Infrastructure
- Parents and the Community.

Schools conduct checks, surveys of all stakeholders involved in the education system and examine the adherence to these norms and values. This is self-check that is conducted.

Similar to that of South Africa, India would benefit from the adoption of such a system to reduce information asymmetry that exists between private schools and the government.

Enabling continuous checks helps a school constantly upgrade its standards and help in bettering the education quality. Since the government would have access to reports and findings from schools and have the ability to regulate aspects that are not up to the mark. It would be able to remove any such material from a curriculum that is against that of what is mentioned in the Act. It ensures appropriate training for teachers routed through private schools and educators.

Apart from this, forming an association as such with the influence of the government gives incentive to private schools to be more careful regarding the type of education they are propagating and maintain the infrastructural necessities for the overall development of schools.

The formation of a code of conduct for schools that are part of such a body would propagate uniformity and standardize, to an extent, some basic requirements that each private school must have. For example, health and safety regulations need to be standardized in order to ensure a safe learning environment for students across all schools.

To instill a sense of accountability in schools and their owners, there needs to be a proviso for independent checks conducted by the appropriate local authorities. Random checks on schools help in ensuring stricter compliance with laws. And as the check is conducted by the independent local authority, there is less scope for cheating stakeholders. In order to make this proviso ironclad, any sort of gratification accepted by the respective officer of the local authority as well as the giver, a penalty should be imposed under the Prevention of Corruption Act, 1988.

3.3 Independent teacher association

The United Kingdom has introduced a system of inception for teachers through the Centre of British Teachers. This is a mechanism that ensures the quality of education by maintaining teacher standards and improve the quality of learning and care provided to children.

Formation of such a body in India, would not only help in standardisation of basic, minimal teaching qualifications but would also eliminate the need for each state to set their own teacher qualifications. It forms a uniform structure to ensure that subpar methods are not being used to teach children. [18]

4. CONCLUSIONS

The Supreme Court of India, in the case of Unnikrishnan P.J. and Ors. Vs. State of A.P. and Ors. [21], read the Right to Education as a part of the fundamental right to life under Article 21 of the Constitution of India. This means that the government is obligated, to the best of its extent, provide free and compulsory education of good quality to all children under the age of 14. By not meeting the standard requirement that the government itself has set, thereby forcing parents to enroll their children into private school, it is denying its younger citizens their right to receive primary education.

Through the evidence provided above, one can draw a parallel between the standard of education provided and enrolment rates. Private schools, with better access to education, qualified teachers and educators, provide an easy option to parents- either choose private schools or sacrifice an important aspect of their child's life by betting on a substandard government school.

Apart from the desperate need to rapidly improve the free, public education system in India, there is also a need to regulate the unexamined growth of privatisation of the educational structure. In India, 99.8 million students are enrolled and are studying in private schools that are left unchecked by the government. This means, that the curriculum and teaching standards of the schools vary drastically from state to state, and school to school.

However, this growth of private schools is a direct result of the ineffective implementation of the Act in India. Similar to that of the privatisation of the health sector in India, which happened due to the unavailability of government-sponsored clinics, increase in the number of private schools is simply due to lower access to education in government schools.

In order to ease the situation and ensure some semblance of uniformity in private schools, I propose the formation of an independent association for private schools in a prescribed zone or locality that are to be checked continuously by appropriate local authorities in order to ensure that quality of education is being maintained and there is compliance by schools to norms made by such a body. This provides an open platform to the government as well as the schools to interact with each other and thereby, reducing the information asymmetry existing between the government and the private schools.

To improve educational quality, it is important to raise the bar set for teachers in the Act as well as in private schools. The overall test scores of both private schools and public schools are lower than the prescribed minimum [9] and thus to better this, it is important to have qualified, trained teachers who have a firm hand on the subject matter and are trained to teach students. Provisions for free training in government universities and institutes as well as scholarships should be provided to incentivise individuals to take up teaching as a profession. Training in schools should be made mandatory for all teachers before starting to teach the students.

In our country, with ample human resource, it becomes important to make complete use of it. In order to do so, the government must impose compulsory education to all children under 14 years to provide them with skills that would benefit individual growth and progress of the country. Private schools and the government need to find a mechanism to work with each other to reduce gaps in learning and access to education to uphold the values of our country and the Constitution.

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