

Challenges to School Edupreneurs in the Existing Policy Environment: Case Study of Delhi and Gujarat

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Introduction

The Indian education ecosystem today consists of the government, private sector, and non-governmental organisations (NGOs) that have helped provide education to millions of children. The enactment of the Right of Children to Free and Compulsory Education Act (RTE), in 2009 should have enhanced private sector participation manifold. However, given the current legal framework, the environment is not conducive for the entry and sustenance of private players. Given this context, this paper seeks to examine the current legislative framework in Delhi and Gujarat, which is acting as a bottleneck for edupreneurs to enter the education sector.

The first section of the paper consists of a brief literature review on the current role of government and private sector in providing education in India. The second section elaborates on the current legislation in the National Capital Region (NCR) of Delhi and the state of Gujarat. The third section enumerates the licenses and documents required to open a school and to obtain a Certificate of Recognition in Delhi and Gujarat. The final section contains the conclusion based on the research conducted.

Role of the Government and Private Sector in Education

Education in post-Independence India has been classified as a not-for-profit sector, and the Government has been the primary provider of education. During the first two Five Year Plans, namely 1951-56 and 1956-61, an important means of achieving Universal Elementary Education (UEE) was through expansion of schooling facilities. In the 1970's, based on the Second All India Educational Survey (AIES) conducted by National Council of Educational Research and Training (NCERT), the planners considered distance from home and density of population as the basic factors for opening primary schools. Various schemes like Operation Blackboard (1987-88) and *Sarva Shiksha Abhiyan* in 2001 contributed to the opening of a large number of schools across the country. The thought of expanding school facilities through small schools, typically based on single-teacher-led system, also became a part of government policy (Diwan 2012).

In recent years, there has been a significant growth in the number of private schools, in general, and low cost private schools or budget private schools (BPS) in particular. These schools are an entrepreneurial response to meet the urgent education need of the country by expanding access to the poorest children. They often operate with limited physical and financial resources (NISA n.d.). These schools are a preferred alternative for many poor parents who are faced with a deteriorating government school system. The Annual Status of Education Report (ASER) 2013 shows that in rural India, the enrolment in the 6-14 age groups has risen with more than 96 percent children in schools. Despite this surge in enrolment, however, at an all India level, for standard III, the proportion of children able to read standard I level text has risen only marginally, from 38.8 percent in 2012 to 40.2 percent in 2013 with the increase mainly coming from improvements among private school children (Pratham 2013).

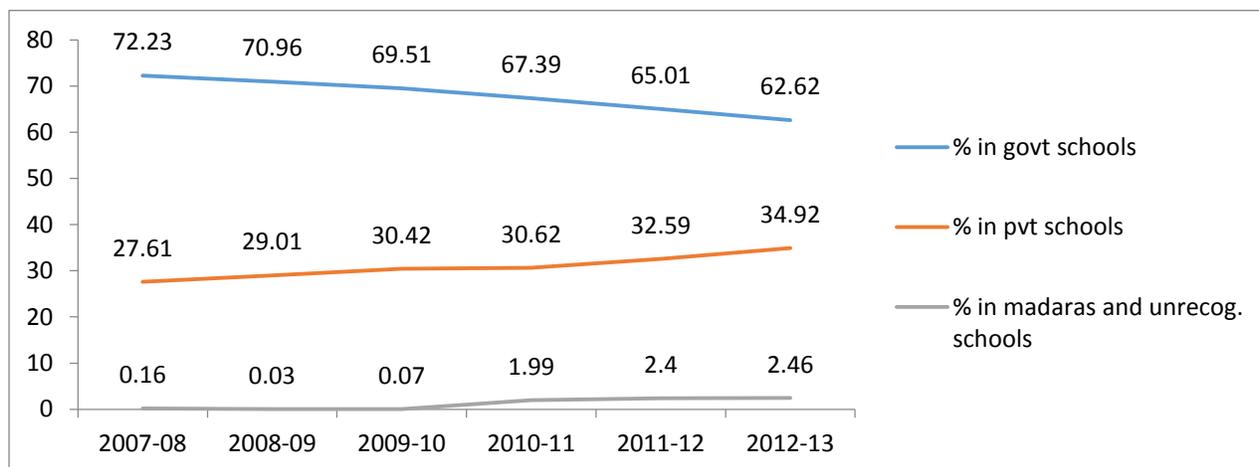


FIGURE 1: ENROLMENT RATES IN DIFFERENT KINDS OF SCHOOLS ACROSS DIFFERENT YEARS. SOURCE: (ELEMENTARY STATE REPORT CARDS, DISE VARIOUS YEARS)

The above figure shows that enrolment rates in government schools have been declining and there has been a simultaneous increase in enrolment rates in private schools between 2007 and 2013. A plausible explanation for this trend is the increase in parental preference for private schools. Further, an increase in the enrolment rates in *Madarasas* and un-recognised schools could be due to the fact that information on these educational establishments are now included in the District Information System for Education (DISE) database. Nevertheless, increased enrolment rates in both recognised and un-recognised private schools, as evident from Figure 1, underscore the crucial role played by the private sector in the Indian education ecosystem. If India is to meet its commitments towards universalisation of elementary education for boys and girls across the country by 2015, as pledged under the United Nation's Millennium Development Goals (United Nations n.d.), then the country must acknowledge the important role of the private sector.

Private sector, unlike the public sector, works on an incentive model, which is the one of the main reasons for its success in various sectors including education. Even in countries such as the United States of America (USA) and the United Kingdom (UK) where elementary education is provided primarily by government schools, there is an increase in enrolments in charter and private schools (Lips 2000). In India, various studies such as "Teacher Performance Pay: Experimental Evidence from India" (Muralidharan and Sundararaman 2009) and "Incentives Work: Getting Teachers to Come to School" (Duflo, Hanna and Ryan 2012), have helped us understand the positive effects of incentive mechanisms, when introduced in educational institutions run by the government. Corollary to these research findings is that schools operated by the private sector, which is self-propelled by incentives, would have better learning outcomes and use their resources more judiciously. Thus the government, keeping in view the necessity of making quality education accessible to the students across all sections of Indian society, should create an enabling environment for private edupreneurs.

Carrie Lips (2000) discusses the role of 'Edupreneurs' and how they are seizing the opportunity and providing a substitute to government schools across the USA. According to the author, there are many factors which have resulted in this particular phenomenon namely, demand for an educated work force, parents' preference towards an alternative to government run schools, and expanding market phenomenon after the policy reforms of 1990's (Lips 2000). These policy reforms focused on improving the standards, assessment and accountability of schools, school finance reforms, teacher training and finally enhancing school choice options. Among the school choice options, one of the policies adopted by a few US states was to provide public support for private education in the form of tax credits, vouchers or other resources, to parents who send their children to private schools (Hurst, et al. 2003). Such policies are the only way to loosen the government's monopoly on education and allow for a natural growth of vibrant education market place (Lips 2000).

The approach paper to the 12th Five Year Plan acknowledges the importance of private schools and the need for re-examining the current "not-for-profit" prescription in the education sector. As noted in the paper, this re-examination is likely to address not only the issue of quality but also the high barriers to entry. (Planning Commission 2011).

Parth J Shah of Centre for Civil Society also talks about how the abolishment of licence-permit raj system has led to consumer sovereignty and how the same needs to be enforced in the education sector. The barriers to enter the education sector and establish a school are high and numerous, and therefore discourage most people who would like to work in the sector. Licensing has the same effect on education as it had on the economy. Through a licensing system, the government limits competition and arrogates the power to decide the number and type of schools that can serve the educational needs of the people (Shah 2000).

The next section focuses on understanding the current legislative framework for a private school to start and obtain a Certificate of Recognition in Delhi and Gujarat.

Current legislative framework of NCR of Delhi and State of Gujarat:

Delhi

The overarching legislations which govern the regulatory framework in education include the Delhi State Education Act and Rules (DSEAR), 1973, Delhi Right to Education Rules, 2011 along with the central Right to Education Act, 2009. However, despite the enactment and implementation of RTE Act and Delhi RTE Rules, the DSEAR has not been repealed, and the above-mentioned legislations need to be read in consonance in matters of fulfilment of legal requirements. Navigating through this complex framework of legislative requirements becomes

quite daunting not only during the time of establishing a school but also for day-to-day operations, thereby creating artificial barriers and disincentives for potential edupreneurs.

For example, the Ministry of Human Resource Development (MHRD) of Government of India has recognised the fact that it is near impossible for private schools operating in land-scarce cities to have a playground within the existing school premises. MHRD has therefore brought out a notification to relax the compulsory playground norm for schools in Delhi. However, DSEAR, 1973 requires that every school should make arrangement for its playground if it does not have any, and therefore contradicts the (above-mentioned) notification. In this case, the RTE Act, 2009 overrules the DSEAR, 1973 rule and is thus brought into effect. (MHRD notification F.No.1-15/2010-EE 4 (Pt.) n.d.)

Hence, the different rules emanating from the RTE Act, 2009, Delhi RTE rules, 2011 and the DSEAR, 1973 have made framework unduly complicated. The legal maze through which edupreneurs in Delhi are forced to traverse is highlighted in the next section.

List of Certificates/Documents

Delhi

To establish a school:

- **Registration of a society:** To open a school, a society needs to be registered under the Society Registration Act, 1860. For this purpose, the following documents need to be submitted with the office of the commissioner of industries with the registrar of societies, Government of NCR, Delhi.
 - A *Memorandum of Association (MOA)* according to the model memorandum of association given in the Act 1860
 - A copy of the rules and regulations according to the model given
 - An *essentiality certificate* stating that it is the correct copy of the rules and regulations
 - An affidavit declaring the name of the president of the society
 - An affidavit consisting of a no objection certificate from the legal owner of the building stating that he/she has no objection for the society office to function in that space
 - A self declaration of all the sources of income for running a particular society for educational purpose

- **Intimation letter:** A letter needs to be sent to the Delhi Directorate of Education (DOE) stating the intention to open a school. The letter would include the following details –

- I. Number of children to be enrolled in the institution
- II. Stage of education – primary, upper primary, middle , secondary or senior secondary
- III. Number of schools established in the preferred zone and the zone population
- IV. Number of schools established in the alternative zone if any and the zone population
- V. Measurements of building
- VI. Declaration of financial resources
- VII. Composition of management committee
- VIII. Procedure for hiring the head, teachers and all other non-teaching staff

- *No-objection certificate from three schools* from the preferred zone or the alternate zone if any for opening a school in the zone
- An attested copy of the building size by the school owner or the architect of the building
- All the bank statements of the society registered from which the funds will be used for the construction of the school building

Subject to filing these documents, an independent inspection carried out by DOE will ascertain whether there is a need for private school in the preferred zone and accordingly issue the No-Objection Certificate (NOC) to the concerned person. After receiving the NOC and completing the construction of the building, the school owner has to file the following documents for obtaining school recognition:

For school recognition from DOE under DSEAR, 1973:

First set of documents to be filed:

- *Certificate of Registration of Society* under the Society Registration Act, 1860
- *Certificate of Land Ownership* for running the school
- *Fire Safety Certificate* – from Delhi fire safety services
 - Certificate from architect that all the rules and measures have been followed in construction of building as mentioned under Delhi Fire Service Rules, 2010
 - Also, every year, a self declaration form that all the rules are being followed need to be submitted
- *Health Certificate* –

- Needs to be furnished from the - Director of Medical Services stating that all the sanitary arrangements have been kept in place for the regular functioning of the school
- *Building Fitness Certificate* –
 - Furnished by the DOE after proper inspection
- *Water Test Report* –
 - From the Delhi Jal Board, attesting that the clean drinking water is available on the school premises
- *Mock Drill Participation Certificate* –
 - Furnished by the Delhi Disaster Management Authority
- *Returns of all the funds and previous audit documents*

The next sets of documents are to be filed as per appendix II under the DSEAR, 1973:

- Budget estimate of the year
- Final accounts declaration
- List of consensus/scholarships
- Declaration of staff salary to verify if the pay scale given by MHRD is followed
- Fee structure of the school and the funds received under this category

The third set of documents has to be submitted as per the Form I under the Delhi RTE Rules, 2011:

- Certificate of Society Registration under the Society Registration Act, 1860
- Affidavit of the list of the members of the society along with their addresses
- Certificate of Ownership of land or leased agreement for a rented building
- Enrolment status of all children
- Infrastructure details and sanitary conditions
- Details of other facilities –
 - I. Declaration of barrier free access
 - II. Declaration of area, building space, classroom size, number of classrooms
 - III. List of teaching learning material
 - IV. List of sports and play equipments
 - V. List of library books/periodicals/newspapers
 - VI. Type of drinking water facility
 - VII. Type of sanitary conditions – list of number of urinals/lavatories for boys and girls separately
- Particulars of teaching staff – qualifications and teaching experience

- Details of curriculum and syllabus
- Certificate that all the information has been there, in data capture format of DISE with the above application

The fourth set of document is as per Form II under Delhi RTE Rules, 2011-

- Application form to the District Education Officer regarding the recognition certificate of the school
- Details of bank accounts for children who come under Section 12(c) of the RTE Act, 2009 regarding the 25% reservation for the economically weaker sections (EWS) and disadvantaged groups

Gujarat

Similar to Delhi, Gujarat is governed by the following legislations: RTE Act, 2009, Gujarat RTE Rules, 2012, the Bombay Primary Education Act, 1947 (for Gujarat) and the Gujarat Compulsory Primary Education Act, 1961.

The regulatory framework requires that all the acts and rules be read in consonance in matters of legal requirements making the process overwhelming for potential entrants and existing stakeholders. Below is the list of documents required to open a school and obtain the recognition certificate in Gujarat.

For opening/recognition of a school:

First set of documents:

- **Registration of a society:**
 - Under the *Bombay Public Trust Act, 1950* all societies that have a charitable purpose have to be registered with the Charity Commissioner. Although societies are registered by the Charity Commissioner's office as trusts, they are given two registration numbers—one under the Bombay Public Trust Act, 1950 and another under the Registrar of Societies. In the state of Gujarat as also in Maharashtra, the Charity Commissioner is also the Registrar of Societies and the Administrator General under the Administrator Generals Act.
 - For registration, details regarding the declaration and details of trustees, resolution of board of trustees, trust deed, bank details need to be submitted as well
- **New school application form:** FORM 1 in Appendix II of Gujarat RTE rules, 2012 must be submitted either to the Municipal Corporation or to the District Education Officer depending upon whether the school is to be located within the district panchayat or not

- Details of old school and its approval form if any
- *No- Objection Certificate* from three schools in proximity
- *Building Use Permission (BUP) certificate* from the Urban Area Development Authority
- *Structure stability certificate* by a structural designer of Municipal Corporation or Urban Area Development Authority
- *Rent Agreement*, if the building has been taken on lease
- *Playground Plan*
- *Building Completion Certificate* from Urban Area Development Authority
- *A map of the building plan*
- *Public Relation Officer Certificate*
- *Developed Area Certificate* furnished by the Municipal Corporation/Urban Area Development Authority
- *Town Plan Document* from Urban Area Development Authority
- *Fire Safety Certificate* from the regional fire officer
 - I. Certificate from architect and owner declaring that all fire safety measures have been put in place

The next set of documents is as per the Form 1 of Gujarat RTE Rules, 2012:

- Certificate of Society Registration
- Affidavit of the list of the members of the society along with their addresses
- Certificate of Ownership of land or leased agreement for a rented building
- Enrolment status of all children
- Infrastructure details and sanitary conditions
- Details of other facilities –
 - I. Declaration of barrier free access
 - II. Declaration of area, building space, classroom size, number of classrooms
 - III. List of teaching learning material
 - IV. List of sports and play equipments
 - V. List of library books/periodicals/newspapers
 - VI. Type of drinking water facility
 - VII. Type of sanitary conditions – list of number of urinals/lavatories for boys and girls separately
- Particulars of teaching staff-qualifications and teaching experience
- Details of curriculum and syllabus

- Certificate that all the information has been there, in data capture format of DISE with the above application

The third set of documents is as per the Form II of Gujarat RTE Rules, 2012:

- Application form to the district education officer regarding the recognition certificate of the school. This would include details of bank accounts for children who come under section 12(c) of the 25% reservation for the EWS and disadvantaged groups.

Lastly, details of the curriculum need to be certified from the GCERT (Gujarat Council of Educational Research and Training) and to be provided by the District Institute of Education and Training (DIET).

Conclusion

The above list of documents and certificates, confirms the fact that the process to start a school and receive Certificate of Recognition is unduly cumbersome. Furnishing similar documents that capture the same information, from different departments makes the procedure arduous, unwieldy and inefficient. The process should not have a demoralising effect on potential edupreneurs.

In the case of Delhi, 28 documents/certificates have to be submitted across six different departments. In Gujarat, 20 documents/certificates need to be furnished across five different government departments. In addition, the same documents needs to be submitted to more than one department, leading to duplication of effort. To make this process more cumbersome, most of these documents require a number of additional certificates and affidavits.

De Soto in his book *The Other Path* talks about 'good' laws versus 'bad' laws. He says 'good' laws must "create incentives for people to seize the economic and social opportunities offered by the country" and they "must facilitate the specialisation of individuals and resources". He further explains that "a law is 'good' if it guarantees and promotes economic efficiency and 'bad' if it impedes or disrupts it" (De Soto 1989). The Indian legal framework is acting quite contrary to this principal as pointed out in previous sections.

Over-regulation by the government is leading to inefficiencies in the education space. Competition, not just amongst private institutions but also between private and public institutions, is the only option to improve efficiency and in turn direct to quality education. By solely increasing the enrolment rate of students going to school, there is no assurance of quality of learning. Given the current scenario where private schools are equally capable if not more, to provide good quality education (Pratham 2013), laws and regulations need to be flexible enough to ensure active participation of the private sector, thereby promoting efficiency in the education ecosystem.

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