

# Complexity, Resistance, and Forbearance in Private Markets for Primary Education in India

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## Abstract

Over the last forty years, India has rapidly expanded access to primary education to the point that a child born today is more likely than not to complete six years of schooling. This is a remarkable achievement for a country that previously had low social indicators in education. At the same time, private schools have grown in numbers at a similar pace. As the Indian state has had to contend with the growth of private schooling, it has passed legislation, such as the Right to Education Act in 2009 and, more recently, the National Policy on Education in 2020. These provisions, while simultaneously recognizing the role that private schools play in primary education, have increased the complexity of the enforcement responsibilities of the state over elite private schools as well as the regulation of infrastructural and quality requirements for low-cost, affordable private schools. In response, private schools have resisted regulatory efforts in courts and challenged the legitimacy of the state through its ubiquity in service provision. Despite explicit regulations at the national level, state-level governments have engaged in forbearance and have been reluctant to enforce laws on paper for fear of retaliation from schools and citizens. This chapter will explore these myriad tensions by first, outlining a history of the growth of private schools in India and then, examining the various ways that legislation has affected the relationship between the Indian state and private actors in education. Against this backdrop, this chapter also briefly addresses recent shifts and trends in this regard, such as the shift in enrollment towards government schools during the COVID-19 pandemic, as households navigated the affordability of private schools as well as public school entitlements. The inconsistency of the Indian state to regulate private schools, the often low-quality of some private schools, and the overall implications of recent enrollment patterns for the public sector raise important questions about the possibility of all children in India to receive a high-quality and equitable education. The size of the public sector, especially after COVID, and the inconsistencies in regulation, point to the political economy of education, particularly around the

connections between parents, private actors, and the various levels of the Indian state as a fruitful avenue for future research.

# Introduction

Over the last forty years, India has rapidly expanded access to primary education. A child born today is more likely than not to complete six years of schooling (ASER Centre 2023). Literacy was at 75% in the 2011 Census, up from 35% in the 1981 Census. Public expenditure on primary education has tripled since 1990 (Goyal 2009), while between 1994 and 2004 the Indian state built 1.3 million primary schools over that ten year period. These are remarkable achievements for a country that previously had low levels of investment in primary education.<sup>1</sup>

At the same time, the private sector in education, particularly primary education, has grown at a similar pace. Approximately 36 and 40 percent of children attend private primary and secondary schools respectively, with those numbers higher in urban areas (Author's calculations from National Sample Survey Round 72). As the Indian state has had to contend with the growth of private schooling, it has passed legislation, such as the Right to Education Act in 2009 and the National Policy on Education in 2020, that have increasingly come to recognize and institutionalize the large role the private sector plays in education, often implying blurred boundaries between the private sector and the state.

In this chapter, we argue that while the Indian state has come to recognize the role that the private sector plays in primary education and extended its regulatory reach as a result, private schools have reacted by challenging these efforts. At the same time, state governments, the level of governance responsible for enforcement, have been reluctant to enforce regulation. We refer to these three aspects as complexity, resistance, and forbearance. Complicating the efforts to regulate the private sector, is the fact that the state in India is not a unitary actor. The different levels of the state, from the national to the local, often do not act in concert (Pritchett 2009), and different branches of government, in particular the courts and the legislature, have offered different interpretations of the respective role of the public and private sector in providing education in India. As such, a complex set of laws governing education at the state and the central (federal) level have made proper enforcement confusing (Mehendale & Mukhopadhyay, 2018), while the de-facto legitimacy of private schools because of the large proportion of children they enroll has left the state reluctant to exercise its regulatory capacity. Furthermore, the perception of private schools in India as better in quality than public schools continues today among not just a majority of the public but government actors themselves, emerging from the legacy of these schools as spaces that educated the country's traditional elites (Jain, 2018, Srivastava 1998). Beyond a lack of capacity to regulate private schools and the sometimes burdensome requirements of regulations on private schools (see Harma in this volume), both not insignificant challenges, we argue that the combination of complexity, resistance, and forbearance have made state governments reluctant to leverage what regulatory capacity they have to enforce laws on the books. Any policy that looks to regulate private schools has to contend with these tensions, and not necessarily the mere regulatory capacity of the Indian state.

Throughout the chapter, we recognize the gap between the formal regulatory environment and institutions that are supposed to govern the regulation of private schools, and the informal norms through which the state and non-state actors have actually regulated private schools (Srivastava, 2008; Ohara, 2012). These

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<sup>1</sup> In the 1980s, India spent approximately 3.5 percent of its Gross National Product (GNP) on education, about average for low-income countries at the time (159-161, Weiner 1990). In 2021, that figure stood at approximately 4.5 percent of its GNP (The World Bank, World Development Indicators and UNESCO Institute of Statistics).

informal norms include state capacity, political will, and public opinion, that all create an environment for the State reluctant to enforce legislation.

We begin by outlining what we identify as the three challenges in regulating private schools in India: complexity, resistance, and forbearance. We illustrate these challenges by briefly tracing the history of the private sector, outlining how private actors have become entangled with the state and how the state has attempted to regulate private actors at various points of time. The Indian state has variously been opposed to private schools, seen them as centers of nationalist and political mobilization, ignored them, and attempted to incorporate them into the larger education service regime in the country. We then turn to more recent regulatory attempts – the Right to Education Act of 2009 and the National Education Policy of 2020 – that have implicitly and explicitly attempted to regulate the private sector's role in education provision. We focus on these two policies as arguably two of the most important national-level policies that have attempted to reconcile the contradictions in Indian education since India's market-oriented reforms in the late 1980s. Our discussion of these two policy efforts highlights both the resistance as well as the forbearance that we claim have been core features of private school regulation in India. We end the chapter with a reflection on changes in the schooling landscape as a result of COVID and why this might provide an opportunity for the state to re-exert its authority over the private sector.

## Regulating private schools in India

The Indian state has been far more willing to allow private schools to skirt regulations rather than fully enforce regulations in part from a belief in the central role that private schools play in educating children in India. This forbearance has complicated efforts of actors across civil society, the policy realm, and parts of the state to properly enforce any regulations on the books (Holland 2016).<sup>2</sup> As a result, government policy has been reactive rather than proactive in responding to regulatory and policy demands.

The complexity of regulating private schools in India can be understood through two aspects. First, borne out of colonial and post-colonial legacies, elite private schools in the country derive de-facto legitimacy through their perceived higher quality (Srivastava, 1998). Public schools have widely been seen as institutions with dilapidated infrastructure, lack of teaching and learning materials, rampant teacher absenteeism, low learning levels, and ambiguous accountability (PROBE Team, 1999; Dreze & Gazdar, 1996; De et al., 2002). Low-fee private schools (LFPs), on the other hand, have borrowed the reputational legitimacy of elite private schools by promising higher quality than the state. They derive a further 'practical legitimacy' among parents, students and teachers by being closer to 'actual practice' than official policy (Ohara, 2012). Through this, LFPs continue to operate by underpaying contractual teachers and overlooking infrastructural deficiencies, despite producing below-par learning outcomes for enrolled students (Srivastava, 2013; Chattopadhyay and Roy, 2017).

State regulators have always been centrally concerned with how citizens who send their children to low-fee private schools would react if those schools were shut down through the enforcement of regulations. As many private schools currently operating would otherwise shut down if regulations were

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<sup>2</sup> By forbearance, we mean the "intentional and revocable nonenforcement of law" (Holland 2016, pg. 232).

fully enforced, this would result in a large number of children that would need to be absorbed into the public education system. Given that issues like the lack of funds at disposal, teacher shortages, and limited space plague several public school systems in India, this absorption might be difficult – thus putting those students at risk of being left out of school altogether.<sup>3</sup> As such, the state has been particularly sensitive to the de-facto legitimacy of private schools and reduced incentives to fully enforce regulations on a private sector that serves a large number of its citizens.

Second, the layered, multi-level regulatory structure in Indian education makes it harder for enforcers and stakeholders to understand those processes (Mehendale & Mukhopadhyay, 2018). Regulatory norms can be laid down by different levels of government, both due to the very structure of decision-making as well as the concurrent nature of Indian education.<sup>4</sup> For instance, Mehendale & Mukhopadhyay (2018) show how teacher eligibility norms laid down by the National Council for Teacher Education, a central government body, might be in conflict with state-specific policies intended to address teacher shortages or might be invalid in schools for tribal children that are operated by a different government department. Therefore, there is a lack of clarity about what regulatory mechanisms apply in any particular case - making public officials skeptical about enforcing norms.

Leveraging this regulatory morass, the private sector has responded through formal and informal resistance to attempts at regulation. While private schools, if formally recognized, are obliged to provide education according to the guidelines of the corresponding national or state board of education, a vast network of them, especially low-fee private schools (LFPs), circumvent state regulations through a reliance on informal procedures and norms - or a 'shadow institutional framework' (Srivastava, 2008). This framework blurs the public-private divide by appropriating any existing regulatory processes through vested interests, political agendas, and personal biases. Elite private schools have challenged state interference formally, challenging regulation legally. Together, the state's legalistic and rights-based approach is often challenged by the private sector's moral position of being beneficial to the historically marginalized (Gorur and Arnold, 2022).

The incentives of the Indian state towards greater regulation and the passage of two landmark policies on education – the Right to Education Act of 2009 and the third National Policy on Education in 2020 – has created a greater, albeit complicated, regulatory entanglement between the Indian state and the private education sector. Additionally, to help in the goal of providing education to the students it does serve, the Indian state has often enlisted the help of private and non-state actors in consultory and service provision roles in areas like pedagogy, curriculum, assessments, and teacher training - further increasing the entanglement between the state and private actors and the subsequent regulations governing their respective roles.

Taken together, the large numbers of citizens that send their children to private schools, the difficulties of enforcing regulations, and resistance from elite and low-fee private schools has led to forbearance by the

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<sup>3</sup> As one example, a study in the city of Patna in the state of Bihar, found that 75 percent of the schools in the city were not registered with the government and, if regulations were followed, would mean that 240,000 children would have to change schools (Rangaraju, Tooley, and Dixon 2012).

<sup>4</sup> Education is a "concurrent subject" in the Indian constitution, with responsibility for its administration, provision, and regulation divided between states and the central government.

Indian state towards private schools. The state has deliberately turned a blind eye to regulating private schools because of the implications this regulation would have on the state's responsibility to educate children. For the state to roll back the larger market forces, the de-facto, rather than the de-jure, legitimacy of the private sector would need to be challenged.

Enforcement would also require a plan for the inevitability that a large number of students will then have to be absorbed into the public education system. COVID has suggested that the state has potential means for this task, but it remains to be seen if the state can reform and build its regulatory capacity. The pandemic has provided a window into what possible role an invigorated public sector could play and reinforced the importance of high-quality publicly provided education, as many families returned to government schools. While the pandemic was devastating for the citizens of India, it has created a constituency that now depends on the governments providing a high-quality service in education.

## A Brief History of Private Education in India

Private schools in India today can be broadly categorized into two groups based on funding sources - aided and unaided. Aided private schools receive grant-in-aid support from the government and maintain stipulated norms as the state recruits and pays their teachers. Unaided private schools are those that set their own fees, without any assistance from the state, and cater to a wide range of populations - from high-fee private schools (HFP) for middle and elite classes and low-fee private schools (LFP) for economically disadvantaged groups (Chattopadhyay and Roy, 2017; Kingdon, 1996; Srivastava, 2008), along with a host of other institutions run by religious groups, and private philanthropies among other non-state actors.

Similar categories of private schools existed in colonial India too, where the distribution of schools varied according to the levels of enrolment across regions. Coastal provinces like Bengal and Bombay, as economic centers of the British Empire in India, had significantly higher enrolment rates than other parts of the country, along with a relatively higher number of private aided and unaided schools (Chaudhary, 2010). Private-aided schools in these regions were enabled by a corresponding private demand for schooling from the presence of state bureaucracies and elite classes. Unaided schools in these regions were often 'English schools' akin to well-known, elite British grammar schools- founded with aims of amplifying English education more widely (Basu, 1974). Several other private schools in this period were operated by missionaries, vernacular societies, and philanthropic trusts run by Indian elites (Jain, 2018).

Jain (2018) outlines five trends that led to the establishment of private schools in colonial India - the desire for a wide diffusion of English medium schools across the country, the upper-caste demand for separate Brahmin-run schools in response to the inclusion of lower-castes in mass education, the patronage of wealthy individuals and reform movements, the self-driven initiatives taken by oppressed castes and communities to establish their own schools, and the involvement of missionaries to promote education for marginalized classes and tribals. Given that public schools were under the jurisdiction of the Empire, many private schools in the early 20th century became centers of nationalistic and political

mobilization - which was the primary reason for state policies at the time for the regulation and monitoring of private education (Jain, 2018).

Following the independence of India from British colonial rule in 1947, as public education in India was reorganized to be more accessible for the masses and more aligned to producing productive and righteous citizens in an era of reconstruction, elite private schools were encouraged to reform their organization and training. These schools, such the Doon school, were asked by the Secondary Education Commission (Government of India, 1953) to go beyond narrowly catering to elite demands and produce morally adept and responsible leaders who would reflect the qualities of any ‘public servant’ in the country (Srivastava 1998). Rhetoric and discourses like these elevated the perception of students in these schools as superior to their counterparts in public schools (Jain, 2018).

However, noting an increasing inequity between private and public education due to their class-based divide, the Education Commission of 1964-66 (Ministry of Education, 1966), popularly dubbed as the Kothari Commission, expressed a lack of concern with the potential of elite private schools to produce service-oriented, nationalist students. Instead, it proposed the abolition of such class segregation in education and instead the establishment of ‘neighborhood schools’ - “a common school system of public education in which no fees would be charged, where access to good schools will be open to all children on the basis of merit, and where the standard maintained would be high enough to make the average parent feel no need to send his child to an independent institution” (Lok Sabha Secretariat, 1967, p. 21). However, the Kothari Commission was not completely averse to the private provision of education, recommending Indian education policy to make “full use of all assistance that can come through the voluntary efforts of the people” (p. 74). It simultaneously viewed a first set of private schools - elite, recognized institutions - as examples of quality and efficiency, and a second group of schools - independent and unrecognized - as necessary for access to education but potentially ‘harmful’ for society and beyond state control. Through its propositions, the Commission implicitly positioned the latter in need of continuous surveillance, while avoiding any discussion of regulating the former. The recommendations of the Kothari Commission laid the ground for subsequent efforts to regulate private schools, especially non-elite ones, through compulsory registration, inclusive admissions, and quality checks.

In decades since then, particularly beginning in the mid-1980s, there has been a significant increase in the number of private schools providing education.<sup>5</sup> Riding on the historical perception of private schools as capable of providing ‘higher quality schooling’ and drawing its student base from poor families by promising better quality than the state, private LFP schools in India are inconsistently regulated by the state. Mehendale & Mukhopadhyay (2018) see the heterogeneous category of ‘private’ schools that currently exists in India as largely an outcome of the state’s inconsistent and differential exercise of regulatory mechanisms. The authors argue that despite the growth of private provision of schooling and shifts in the kinds of educational aspects that private actors can cater to, there has been no change in the regulatory environment. Instead, there has been an implicit endorsement of private school efficacy in

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<sup>5</sup> While the data does include some unregistered schools, it is likely an undercount of the number of private schools as many of the unregistered schools do not report data to the UDISE School Report Cards (Rangaraju, Tooley, and Dixon 2012)

policy discourses as well as an intensified institutionalization of public-private partnerships (PPPs) without any legal frameworks.

## Contemporary Policies

Given the large increases in access and enrollment to primary education between the 1980s and 2000s,<sup>6</sup> the Government of India and various state governments began to pay attention to the policy-landscape governing education, both public and private, across the country. What started as small, state and national-level experiments (Mangla 2017), metastasized into *Sarva Shiksha Abhiyan* in 2001 - a large national-level project that sought to provide access to primary education to all children across the country. With the victory of the United Progressive Alliance (UPA) composed of the Congress Party and their coalition allies in 2004, the national-level government focused on rights-based legislation that emphasized the basic constitutional rights that had previously been denied to ordinary citizens. These included a right to work through the National Rural Employment Guarantee Act (NREGA) of 2005, a right to food through the National Food Security Act of 2013, and the Right to Education (RtE) Act of 2009. In contrast to other rights-based legislation passed at the time, the Right to Education passed with little debate, opposition, or controversy at the time, speaking to its perceived de-politicized nature. In this section, we look at both the RtE Act of 2009 as well as the latest National Education Policy (NEP) of India (Ministry of Human Resource Development, 2020) to illustrate the resistance and forbearance that lie at the core of private school regulation in India.

### The Right to Education Act

The Right to Education Act (RTE Act) is currently the apex law in the country governing government and private schools and outlines certain labor and infrastructural standards that government and private schools must maintain failing which they must be shut down (Government of India 2009). These include requirements that schools have separate bathrooms for girls and boys, sufficient land for playgrounds, a maximum pupil-teacher ratio, and a certain salary level for teachers. There are three provisions in the act that speak directly to private schools and attempt to regulate them: Sections 12(1)(c), 18, 19, and 25. They concern the ability of the private sector to accept children from disadvantaged backgrounds regardless of cost, that private schools seek recognition in front of the state, and that private schools have certain minimum standards equivalent to the state ones, respectively. Collectively, they speak to the dual nature of private provision in India: schools so expensive, the state must force them to accept poor students, and schools of such poor quality, the state must regulate a minimum level of quality for their continued operation.

While the larger RTE did not face legislative opposition, Section 12(1)(c), which mandated that private schools must accept 25% of their incoming class from low-income and otherwise disadvantaged sections of the population, was frequently challenged by elite private schools. While the exact definition of who counted as belonging to “economically weaker sections and disadvantaged groups,” varied from state to

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<sup>6</sup> Net enrolment increased from 38 to 94 percent in primary schools and from 11 to 75 percent in secondary schools between 1986 and 2018 (Author’s calculations from the National Sample Survey, various rounds).



state,<sup>7</sup> the clause would definitely force elite private schools to admit students that previously did not have access to elite spaces. This culminated in a case in front of the Indian Supreme Court between elite private schools in Rajasthan and the Government of India (Supreme Court of India 2010), won by the Government of India, that one of the advocates for the government described as “India’s civil rights moment.”<sup>8</sup> This part of the policy has received the most academic attention (Rao 2019; Romero and Singh 2022), but is perhaps the least contentious of the requirements for the vast majority of private schools that are low-fee and already target this population.

Section 18, 19, and 25 however, impose real costs on private schools and require real regulatory oversight from the Indian state. Section 18 requires private schools to register themselves with the state, Section 19 requires a baseline level of amenities such as infrastructure in all schools equivalent to government schools, and Section 25 requires a certain pupil-teacher ratio. For low-cost private schools, especially those in urban areas, these requirements impose costs to compliance given their operating model of relying on dense construction with few amenities and high pupil-teacher ratios. Many low-cost private schools have been unable to meet these requirements given the cost, interest, and feasibility of doing so, often in dense urban areas lacking sufficient space. The Act also poses a high cost on schools that do not meet its requirements - any school found in violation of the law is subject to being closed.

Akin to Mehendale & Mukhopadhyay’s (2018) argument that private school categories in India emerge *as a result* of regulatory mechanism, the provisions of RtE have created a class of schools that exist in a legal limbo. By the letter of the law, they are illegal, but they continue to have high levels of enrollment that grant them de-facto legitimacy among the communities they serve (Ohara 2012). This limbo has created a problem for state governments in their role as regulators and enforcers of the law. While the state does not lack the capacity to enforce this, or any, law, they have so far been reluctant to do so given the implications of the law. Private schools would not only shut, but the state would then be required to educate children previously in private schools themselves, and accept a large number of children from private schools back to government schools (Iqbal 2013). As we suggest later, when discussing the impact that COVID has had on the relationship between citizens and private schools, it appears that the claims by the state that this would pose a large burden on them appear overblown.

All together, the various sections of the law have met resistance from elite private schools because of the requirements they accept children from outside of their traditional student body and from low-cost private schools as it would require them to conform to infrastructural and staffing requirements they have claimed are beyond their capacities. Elite private schools have challenged the constitutionality of the law in courts (For examples from Rajasthan, see Supreme Court of India 2010, for examples from Maharashtra see High Court of Bombay 2021 and Pandit 2024, and for a similar challenge as the Maharashtra case from Karnataka that is pending in the Supreme Court, see The New Indian Express 2018). For example, in the foundational ruling that established the constitutionality of the Right to Education Act, the Supreme Court of India passed a broad judgment against elite private schools, arguing that state’s had free reign to decide

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<sup>7</sup> For example, when first passed, the state of Andhra Pradesh defined socially disadvantaged children as children from official designated Backward Classes and Other Classes whose family income did not exceed Rs. 60,000 per year (approximately USD \$1,300 in 2010 prices), whereas in the state of Assam, this was defined as Scheduled Caste and Tribe children as well as children with special needs, orphans, migrants, street children, and children living with HIV or affected by HIV (Central Square Foundation 2015).

<sup>8</sup> Interview with Emmerich Davies, January 2013.

how to provide education to children, whether through their own schools or private schools (Supreme Court of India 2010, pg. 12). They have also lobbied government officials to interpret the law in ways favorable to private schools given the many distinct interpretations of different sections of the law. One example from Karnataka and Maharashtra has been an appeal by elite private schools arguing that if there is a government school within one kilometer of the private school, private schools should not be subject to Section 12.1c of the law (Pandit 2024). Low-fee private schools have resisted the law in far more covert ways, either by failing to meet the infrastructural requirements of the law, or failing to register with state boards of education, thereby either ignoring or escaping state regulation (Iqbal 2013).

On the state's side, the cost and bureaucratic effort to regulate private schools as required by legislation is often beyond the effort and desire of many state-level governments, the primary body responsible for regulating private schools. State governments are required to reimburse private schools up to the cost of educating children in government schools as part of Section 12.1(c) of the Right to Education Act. The section states that 25 percent of seats in private schools are to be allocated to children from the "weaker section and disadvantaged group [sic]." Claims of strained public budgets and the multiple veto points in the disbursement of state budgets have made it difficult to reimburse private schools on time (Pandit 2022, 2024), in turn making private schools more reluctant to facilitate the entry of students through this policy. Finally, governments recognize the full cost of properly regulating private schools in the court of public opinion (Iqbal 2013). Properly regulating private schools would involve shutting many down. This would lead to a large number of children who would then have to be absorbed into the public system, an additional strain on public school teachers, schools, and administrators the government has been loathe to absorb. These pressures are likely particularly acute in urban areas where close to 60 percent of children study in private schools. Many politicians also run private schools themselves, creating a deep conflict of interest in their regulation (Read 2023; Rudolph and Rudolph 1972).

## National Policy on Education 2020

India's National Education Policy (NEP) of 2020 presents an explicit shift in the state's regulatory perspectives for private schools. Recognizing an asymmetry between the state's regulatory approaches towards public and private schools, the policy outlines how earlier regulatory practices have "not been able to curb the commercialization and economic exploitation of parents by many for-profit private schools" and have instead "too often inadvertently discouraged public-spirited private/philanthropic schools" (Ministry of Human Resource Development, p. 30). In response, NEP 2020 dilutes the state's excessive regulation of private schools by proposing a "a 'light but tight' regulatory framework" (p. 5) - one that encourages the autonomy and agency of these institutions as long as there is transparency and disclosure of finances, procedures, and educational outcomes. Additionally, it also extensively encourages private philanthropic efforts to improve quality education. The explicit embrace of private schooling by the State is perhaps evident from the policy's emphasis on the idea that "the private/philanthropic school sector must also be encouraged and enabled to play a significant and beneficial role" (p. 31) in achieving the highest levels of educational outcomes for India.

As evident from the policy guidelines, there is a marked foregrounding of outputs as the primary focus, which entails a relaxation of regulations for inputs in lieu of the potential for schools to meet desired

learning outcomes. For instance, mandates around physical and infrastructural requirements such as building schools, infrastructure, physical spaces, playgrounds, which have been historically ‘high-stakes’ and enforced to shut many private schools, have been relaxed.

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 a pleasant and productive learning space.  
(p. 32)

This shift indicates the provision of significant agency to private schools with respect to spatial and infrastructural aspects, potentially opening up space for LFPs to increase profits by cutting costs further on fronts that they have been historically poor in.

Much of this relaxation comes in exchange for a promise of improved learning outcomes - which is now the central focus of the State, as evident from recent national missions to ensure foundational literacy and numeracy (FLN) for all children in primary school by 2025. As such, the purpose of regulatory functions of the Indian state has been reoriented to fit such learning goals. The NEP states that “the goal of the school education regulatory system must be to continually improve educational outcomes; it must not overly restrict schools, prevent innovation, or demoralize teachers, principals, and students” (p. 30). It also calls for a higher synergy by proposing pairing public schools and private schools for exchange of best practices. Leaving the responsibility of systematically implementing this pairing to states, the policy demands for the ‘best practices’ of private schools to “be documented, shared, and institutionalized in public schools, and vice versa, where possible” (p. 30), a practice that already occurs informally (Clough 2017). The historically underlying belief about the relative superiority of education quality in private schools is thus embraced by national policy in some ways - as seemingly *a-political, objectively desirable, and commonsensically shared* goals of learning outcomes and best practices are used to relax regulations.

Moving away from an imposed regulatory framework, the NEP proposes a self-regulation system for ensuring school quality. It calls for an independent state body called the State School Standards Authority to frame a minimal set of standards for basic parameters like safety, basic infrastructure, number of teachers, etc. Accountability for all schools, including private ones, then would be based on their transparent public self-disclosure of meeting these standards, as a way of bringing down “the heavy load of regulatory mandates currently borne by schools” (p. 31). On the front of the main focus on learning outcomes, the policy emphasizes the continuation of the sample-based National Achievement Survey (NAS) as well as the initiation of State Assessment Surveys (SAS) as periodic ‘health check-ups’ - anonymized data from which can be used by schools as part of their public disclosure.

In an effort that deviates from earlier state practices of enforced regulation of private schools, NEP 2020 marks a potentially new phase in Indian education policy and governance that is primarily centered around the urgency accorded to the achievement of foundational literacy and numeracy outcomes for all primary school children by 2025. An outcome-centered regulatory approach offers private schools a chance to be autonomous and to exercise their own agency in matters of inputs, as long as they can meet stipulated learning outcomes. While the seeming focus on ‘quality’ might be seen as a welcome move by some, it remains to be seen how these relaxations of regulations intersect with the provisions of RTE and

other mandated government schemes like mid-day meals as well as how private schools circumvent or resist state interventions in light of these changes.

## Post-COVID

The other recent sea change in the private school landscape in the country has been the COVID-19 pandemic. With the economic crisis of the pandemic, one of the deepest in the world compounded by poor government policy (IMF 2023), household finances were particularly hard hit. The best available data from educational assessments that ask about enrolment and household consumption surveys that ask about expenditures on education suggests there has been a large-scale return to government schools since the COVID-19 pandemic (ASER Centre 2023; Bhuradia, Davies, and Yuan 2023). Why?

While there is no clear data for why this may be happening, we can think of several potential explanations. The economic crisis from COVID hit India particularly hard and the country sustained one of the largest decreases in economic growth and the world's fourth longest school closures (UNESCO, UNICEF, and The World Bank 2021). With household finances pinched, many households likely chose to cut back on educational expenses such as private school fees. Many private schools across India rely on philanthropic and other charitable donations to cover operating expenses. As the economic crisis deepened, many donors cut back on charitable donations and schools faced deeper financial constraints. Finally, with all schools closed, many low-cost private schools found it cheaper to close altogether than retain and continue to pay staff. Whatever the reason, they have resulted in the same outcome: a large number of private schools had to cease operating. It is not yet clear whether this is because they were unable to afford operating and labor costs such as rent and teacher salaries during the pandemic or because they no longer received financing from parents or philanthropic donations.

Government schools, however, continued to operate in a different fashion during the lockdown. Many of them often continued to provide reduced services to children through delivering textbooks to children, engaging in some forms of online learning, the continued provision of school meals, and home visits. While far short of adequate, these efforts allowed many children to continue to receive some form of education during the lockdown that early evidence suggests has continued since schools have reopened (Bhuradia, Davies, and Yuan 2023). Together, these suggest that, despite the hit to public budgets, the public sector was still able to continue providing services.

External circumstances, outside of the government's desire to regulate schools, or civil society or private efforts to pressure the government to enforce rules on the books, have changed the relationship between citizens and the Indian state as far as education is concerned. While unable to adjudicate why here, the underlying trends point to a changing relationship between the Indian state, private providers, and parents and children. At the very least, it belies the simplistic narratives that equate "quality" education with private schools.

There is a tremendous amount of scholarship on private education in India, rightly so given the outsized role private schools play in educating children in India. At the same time, they educate less than half of all primary school aged children in India, with this number decreasing even further after schools reopened

from COVID closures. A lot of attention has been on private schools, but they still make-up a small part of the larger landscape in India. Perhaps we should pay more attention to the state sector still.

## Conclusion

In this chapter we have outlined a brief history of state efforts to regulate private schools across India, as well as the implications of contemporary policies and events on the ability and demand for the Indian state to regulate private schools. From benign neglect as a result of their importance in educating the country's elites, government policy has then swerved from prescriptive to laissez-faire. At the same time, the economic crisis of the COVID-19 pandemic has led to many families moving their children to government schools, creating a different educational landscape that prior governments were reacting to.

One of the more striking features of the growth of private schools in India has been the complexity of the regulations governing private schools across the country, resulting in resistance from private actors and forbearance of the state towards them. India's federalism and concurrent responsibilities for education have produced a myriad of laws that schools have either challenged or ignored, and governments have been reluctant to fully enforce. This has resulted in a large number of private schools that violate much legislation in full view of the state.

Both the Global Education Monitoring Report of 2021-22 and the 2018 World Development Report outline a role for the state in better regulating private schools (UNESCO 2017, World Bank 2017). Lacking in these calls, however, is a recognition of the inherent political economy challenges of either enforcing existing regulation, or better regulation. Powerful interest groups, whether they be elite or low-fee private schools, parents and students, or politicians themselves, will look to find ways to resist any regulation. This is as true in India as it is in high-income countries (for example, see Hackett 2021 for the ways that proponents of school vouchers in the United States have variously evaded regulation, co-opted public funding, and manipulated rhetoric to advance the agenda of voucher politics). It is here that researchers will find most fruitful avenues for further study: where do the interests of the various actors involved in the provision of education, private and public, run-up against the ability of the state to provide high quality education whether in the private or public sector.

We end by recognizing that the separation between the Indian state and the private sector has always been fluid, and more recent developments continue to question a clean public-private binary. When private schools served as centers of nationalist and political mobilization, many of the country's post-colonial political elite emerged from schools like Doon and St. Xaviers. When the state sought to expand public education in the 1980s and 1990s, private schools grew in tandem with the growth of public education. Today, civil society organizations like Teach for India and Pratham provide large amounts of support to the national and various state-level governments through advice, consulting, and the provision of teachers. It is these liminal spaces that we believe provide a fruitful avenue in which scholars should focus their attention in coming years, as the private-public binary does not provide a useful lens through which to understand the impact of markets in education in India. Beyond the political economy of the private sector, however, we also urge researchers to remember that although 40 percent of children attend private schools, this leaves the majority of children in publicly provided education. Our research priorities should be commensurate with the size of the sector.



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