



Analysis of School Fee Regulation in India

Centre for Civil Society

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Introduction

India's government schools are often mistaken to be the only option for children from disadvantaged backgrounds. Private school enrollment has been increasing at rates comparable to government schools even after the government started implementing its flagship program, *Sarva Shiksha Abhiyan* for universalising education. The percentage of children in the 6-14 years age group in rural India enrolled in private schools increased from 18.7 percent in 2006 to 29 percent in 2013 (Annual Status of Education Report 2014). The figures for urban India were estimated to be around 58 percent in 2005 by the Indian Human Development Survey and could only have increased (Muralidharan, *A Renewed Model of Education* 2014). This is a clear indicator that parents prefer private schools, if they can afford it. It may also be noted that the number of private schools which charge very low fees and function in low income areas have been identified to be on the increase, in response to this demand (Baird 2009).

The focus of private schools on English-medium education and the significance of English in the social mobility aspirations of the people is one of the primary reasons that poor parents prefer private schools. But this is only one side of the story. As the annual ASER reports brought out by the NGO *Pratham* indicate, states with higher enrollment in private schools also perform better in testing of learning outcomes. Most of these private schools in rural areas and poorer sections of urban areas function at costs much lesser than what the government allocates for its schools (Muralidharan and Sundararaman 2014). Thus, due to several such reasons the private schools in India share a huge load of the education sector—and this is without even considering the smaller private schools that are not recognised by any education board.

While parents increasingly send their children to private schools, they are also simultaneously affected by the increasing cost of living every year. Private schools charge fees based on demand and this serves as a method of eliminating competition to select students. This has created a situation whereby the students from relatively better-off households get preference over children from economically weaker sections for school admissions. But since parents want their children to be educated in a private school, but cannot afford it, they have sought the help of the government to control the price of the service offered by private schools (Raghupathi 2010). It is in this context, that some states in India have started implementing laws to fix the maximum tuition fees that can be charged by private schools. The economic, and subsequent social, effect of controlling the price of education needs to be further explored, especially since free government schools exist, which benefit from an increased education budget every year.

The next section of the paper briefly explains the legal aspects of the regulation of school fees in India, focusing on Tamil Nadu and Rajasthan. The subsequent section will examine, with the help of secondary data, what the current situations in these states are, post-implementation of the Regulation of Collection of Fee Acts. The fourth section will use existing literature on price controls to examine the economic impact of price control. The fifth section will try to understand how private schools in the two states are coping with the problems that these Acts have brought upon them, with the help of both primary data collected from school owners in Tamil Nadu and Rajasthan, and secondary data in the form of newspaper reports. The last section will provide an overview of the major learnings from these sections.

Regulation of Collection of Fee Act in India

This section examines the implementation of the Tamil Nadu Schools (Regulation of Collection of Fee) Act, 2009 by the State Government. The Act can be understood as a reaction to be expected from the government in Tamil Nadu which has a history of ceding to public demand. While complaints from parents and the media about some private schools charging exorbitant fees were cited as the reason for such a move, it is important to understand the unseen factors contributing to this problem. Under the Act, a district committee will decide the maximum fee that can be charged by a private school affiliated to the state education board in the district. The committee consists of a retired High Court Judge nominated by the government, other directors from the state education department, the Chief Engineer from the PWD at the state level, district level education officers, and principals of government schools at the district headquarters.

The factors to be taken into account under the Act to fix the fees charged by schools, other than administrative costs and a "reasonable surplus required for growth" are:

1. Locality of the school, namely, Rural area, Town Panchayat, Municipality, District Headquarters, Corporation
2. Strength of the students
3. Classes of study, and
4. Status of the school, as indicated below:-
 - a. Schools having minimum infrastructure facilities as prescribed by the Government from time to time
 - b. Schools having infrastructure facilities more than prescribed:-
 - i. Schools having more than minimum requirement of lab, more number of library books, classroom facilities and other sanitary and drinking water facilities

- ii. Schools having more than adequate classroom facilities, lab facilities, library area, number of books, very good sanitation facilities, highly protected drinking water facilities and other sanitary facilities together with high percentage of results
- iii. Schools fully equipped with modern facilities like Air Conditioner with 100% results

While schools may object to the initial fixed fee once, the ruling of the committee is final and the fee is fixed for three years. Schools can apply for a revision of fees after this time period. The committee also has the power to verify whether schools that are already affiliated with the Central Board of Secondary Education (CBSE) charge fees commensurate with the facilities (Tamil Nadu Government Gazette 2009).

The situation in Rajasthan is similar, with the implementation of the Rajasthan Schools (Regulation of Collection of Fee) Act, 2013. The Rajasthan law takes into account the qualifications of teachers as an additional factor for the district-level committees that decide the fees for private schools for a three-year period (Rajasthan Government Gazette 2013). With the Right to Education Act (RTE) 2009, being implemented across India from 2010 as a strong government initiative to universalise education, the private schools in the country have already been under much financial and administrative pressure to comply with the new rules. The imposition of a maximum cap on the fees that can be charged by private schools is an additional burden that exacerbates the problem. Associations of private schools both in Tamil Nadu and Rajasthan have been protesting these Acts before and after their implementation. They have sought help from the judiciary, individually and as groups, to remedy this situation and several court cases remain in motion.

The judiciary has been far from clear on the issues raised by private schools regarding the fixing of fees by government-formed committees. In 2010, the Supreme Court had overturned a stay order that was placed on the committee-decided fees as the result of a petition filed by private schools in Tamil Nadu (Venkatesan 2010). In 2012, the Madras High Court, in response to over 300 writ petitions, advised the committee to review the fees prescribed. The committees at the district still hold the authority on the issue under the Act, and all of the grievances of the private schools which cannot function under the new fees prescribed by the committee have been directed or redirected to the same committee.

Current Situation of Private Schools

In Rajasthan, the private schools affiliated with the state board of education claimed that most schools were already charging very low fees and the new Act would mean that the fees would be charged at a much lower level leading to a situation where they would have to be closed down according to the *Daily Bhaskar*, a leading newspaper in Rajasthan in an article published on April 21, 2013. But the Act was nevertheless put into motion and of the nearly 30,000 schools recognised by the Rajasthan Education department, more than 18,000 have been forced to comply with the Act by reducing their fees in 2014, according to a representative of the school owner's association in Rajasthan. However, the Rajasthan court in response to the grievances of the private schools has conditionally allowed the increase in fees, pending litigation on a case which cites Supreme Court rulings to the effect that the government does not have the right to regulate fees in schools that do not receive government aid, based on a report published in the *Times of India* on October 8, 2014.

The problems with the Fee Regulation Acts in Rajasthan and Tamil Nadu are manifold. First of all, the complaints against unreasonably high fees charged by private schools are relevant for only a small section of private schools. The vast majority of private schools charges very little and function in disadvantaged areas, already bearing the weight of extra compliance costs under the RTE. Secondly, government schools already exist in all these areas and people are choosing to send their children to private schools instead. Therefore, the underlying problem is that government schools are perceived to be worse than private schools when it comes to learning outcomes. But rather than focusing on improving government schools, the government has reacted by making it tougher for private schools, which are already performing better, to function efficiently. Thirdly, even if the regulation of fees in private schools can somehow be justified, the committees formed to decide the fees have no representation from stakeholders. Bureaucrats, who are in charge of the government school system or are part of it, make up the committees. And these committees are set up to be the monitoring system for themselves, considering that all complaints with the decisions of the committee are directed or redirected to the committee itself.

In the states of Karnataka and Maharashtra, an Act that regulates the fees charged by private schools will come into effect in 2015. This is after the state government in Karnataka tried to arbitrarily impose a fee regulation act drafted in 1984 by which no educational institution shall collect more than INR 10 per month per student for 10 months (pre-primary), INR 30 per month per student for 10 months (Primary), INR 40 per month per student for 10 months (high schools) according to a *Times of India* article published on August 25, 2012. In Maharashtra, the district-level committees are comprised of parents and teachers in addition to bureaucrats and

government school principals but private school management representatives still remain out of the picture as can be gathered from the *Times of India* report on June 9, 2014.

Private schools in both Karnataka and Maharashtra are moving cases against the imposition of the regulation but if the legal proceedings in Tamil Nadu and Rajasthan are any indicator, the government decision will prevail at the expense of private schools. It might also be noted that the Karnataka regulation was initially moved as a reaction to increasing college fees but private schools were part of the legislation that was drawn up under the Karnataka Educational Institutions Act as can be understood from the *New Indian Express* article on May 25, 2014. The case in Maharashtra is such that if the difference between the fees decided by the committee and the school is less than 15 percent, the committee's decision will prevail. It is still unclear whether there is an alternate source of recourse if the difference is greater than 15 percent. In Tamil Nadu, the difference is more than 30 percent on an average and goes up to more than 50 percent in some cases. School owners complain that complying with the Act means all kinds of fee waivers and scholarships that they were providing for children from disadvantaged sections will have to be dropped as a part of cutting costs to survive in such an ecosystem.

Price-control: Intended Effects & Actual Effects

The imposition of fee regulation on private schools can be understood to be a reaction to the demands of some parents against large private schools charging high fees for their services. This can also be seen as a direct result of the assumption that these are the only types of private schools that exist, which is not the case. While consumers are always seeking lower costs in any economy, the problem with the welfare state is that its attempts to help the poor, it reduces costs at the expense of the producers. While this artificial reduction of price may be seen as a positive impact by the consumers in the short-term, in the long-run the effects will be disastrous for them as well. Producers, who see no chance of increasing prices end up having to cut costs, are unable to function efficiently and lose incentive to perform better. The regulation of fees therefore has the unintended consequence of lowering the standards of private schools, by destroying the competition in the market.

The regulation of price has always proved disastrous. It is ironic that though the intentions were always to protect the disadvantaged section of the population from being exploited, price control often has the opposite effect. Fiona Scott argues that when price is controlled artificially in one sector, it leads to the talent and entrepreneurs in that sector to migrate towards others that benefit more (Scott 2001). This is the case not just with setting the price at a lower level than the market price, but for setting it at a higher level as well. One of the problems with setting prices at a lower level is that it creates an entry barrier in the market, thus leading to a shortage in the competition. In this case, that would mean fewer

entrepreneurs will be willing to start schools since it is not profitable. It is also the case that existing schools will have to close down because they cannot meet running costs, and/or due to a lack of demand because of falling quality as a result of lower fixed fees.

Scott also provides numerous instances in history where the control of prices led to problems for the consumers, that it was actually supposed to solve. The regulation of commodity price in Paris in 1973 resulted in producers reducing the quality of their products and in the rise of a parallel black market to provide services that the legal market could not provide at the fixed prices (Scott 2001). In the case of education, a parallel market would mean unrecognised schools that cannot be regulated by the government. Such schools already exist because they cannot meet the infrastructure requirements that the government and education boards set down, and yet they continue to attract students. This should surely serve as an indicator for the results to be expected from setting more regulations on private schools.

Another analogy is the example David Tarr gives, of television sets in communist Poland. The government kept the prices of television sets artificially low, meaning that there were fewer producers and they alone could not meet the demand generated by the lower price. The situation was such that the cost of regulation of television sets to Poland's economy was ten times the industry's total sales (Tarr 2009). Both government and private schools have maximum capacities, and when the prices are lowered leading to fewer number of schools, this means there will be more students out of school simply because there are not enough schools. In the Indian scenario, where more and more parents are sending their children to private schools, the destruction of the private school ecosystem would mean that a large number of students will be out of school because the government school system will not be able to accommodate such a large number of students.

Thus, while the intention of fee regulation is to decrease cost of education and therefore increase the access to education, the effect is that it creates a supply deficit which in turn ends up reducing the access to education for the very population it had hoped to help. Drawing from Tarr's analysis of television sets in Poland, the logical result would be that the government would have to spend much more than it hopes to, or is able to, on government schools, to offset this supply deficit.

The effect of price control on a commodity, as can be seen, will ultimately be a costly form of rationing of the commodity because of the scarcity that artificial prices generate by making the market for the commodity less attractive for potential and existing investors. The importance of education to a society is accepted and education is now seen as a necessary service. The attempts at increasing accessibility to these services, while justified, are misinformed. Schools are expected to offer services without expecting profits, as is made obvious from the legislation

that requires schools to be registered as non-profit institutions. But the service offered comes at a cost and high levels of risk for the school management. With the imposition of the infrastructure requirements under the Right to Education Act 2009, potential investors are likely to find opening schools to be an almost certain loss. Existing schools have been closed down because they have not been able to meet infrastructure requirements at the low fees that they charge. Price controls on top of this, will make this situation more severe for the education market and ultimately, to the accessibility of a service that is fundamental to the growth of any society.

Coping with Fee Regulation

The regulation of school fees have been in effect in Tamil Nadu since 2010 and the associations of private schools are still engaged in seeking legal recourse. While there are obvious difficulties of not being able to run schools with the same quality as before at lower costs, school owners also raise issue with the process of determination of fees. In Tamil Nadu, the salary paid to teachers is not a factor in the calculation of fees. Several schools which were earlier offering annual hikes for teachers who gain experience are now putting it on hold as a part of cost cutting measures. The schools also suggest that the three-year period for the fixed fee is another pressing obstacle in the implementation of the Act. This is true in both Tamil Nadu and Rajasthan, where the school owners are frustrated at the how annual hikes are designed without the use of any economic analysis. Costs are increasing every year and while most schools are struggling to survive at the current level of fixed fees, school owners in Rajasthan are unsure of whether they will be able to run the schools in another two years.

Private schools which offered extracurricular activities in Tamil Nadu are either removing them or making them exclusive for students who pay extra for them. This move was challenged in court but the Madras High Court upheld the right of schools to charge for extracurricular activities as long as they are optional for the students, as the regulation applied only for admission and tuition fees. School owners also admit that with the demand for admission increasing due to lower fixed fees, there is a larger cost involved in the screening process as the capacity of schools will be limited. The forced lowering of fees means that the chances of growth to accommodate more students are also negligible. Under the RTE Act and the Regulation of Collection of Fee Act, the paperwork required from each school has increased tremendously and while this does help in increasing accountability, it has also significantly increased costs for the schools while not giving them the opportunity to make up for these costs by controlling the fees that can be charged.

Private school owners in Tamil Nadu have an additional factor that has been in play since 2003. According to a report in *The Hindu* on August 27, 2013, under recommendations made by the S.V. Chittibabu Commission report, private schools need to meet unreasonable land requirements (like 8 grounds if the schools is located in the district headquarters, 10 grounds if it is in a municipality area and 6 grounds if it is located in a corporation area) to be eligible for renewal of recognition. However, the cost of expansion is not covered in the process of determination of fees by the district-level committees, according to school owners and private school association representatives.

School owners suggest that most parents whose children are admitted in their schools understand the facilities that they provide and are willing to pay the fees charged but it is only a few parents who have made it a political issue. The enforcing of different laws, together with this recent move to regulate the fees, overlapping simultaneously has created confusion for the schools on how to comply with all the regulations, and the government is making it a point not to renew the recognition of existing schools that do not meet some requirement and to identify the unrecognised schools to shut them down. While minority institutions have been given some respite because the courts have recently allowed them to hike their fees by up to 25percent of the fees fixed by the district committees, other small schools have been reduced to depending on loans and the help of better-off schools in the associations of private schools for maintenance and expansion. This is obviously not a sustainable system.

Conclusion

The regulation of fees collected by private schools would seem like a reasonable move considering the mainstream understanding that all private schools charge high fees. But the problem with the mainstream understanding is that there is a vast majority of private schools that charge low fees and cater to disadvantaged sections of India. What is also worth noting is that more and more parents want to send their children to private schools anyway but the supply does not meet the demand. This is why parents want the fees to be lowered. Private schools generate demand due to a variety of reasons from better learning outcomes, greater accessibility and English medium instruction to provision of extracurricular activities. Consumers want the price to be lowered because there are not enough private schools and the existing ones can charge higher fees and still attract enough demand. If, instead of taking measures to increase the supply of private schools and increase competition among private schools so that they lower the price by themselves to survive in the market, the government moves to force the prices down, it will only lead to a larger supply deficit which ironically ends up further from the consumer need that the supply should meet their demand.

Once this scenario is understood, the regulation of fees seems puzzling. The effects of regulation of fees are basically that schools struggle to meet running costs and look for ways to cut costs when they are already registered as non-profit institutions. On top of this, there are other government regulations like the Right to Education Act 2009, across India, and the land requirement laws in Tamil Nadu that these private schools are expected to meet for recognition. Thus, the not only are the extra costs not considered by the district committees that decide the fees to be charged by every school but the school are expected to meet several government regulations that they do not currently meet, at the same time. This is in sync with the existing government education policy that focuses on input norms like infrastructure but ignore the learning outcomes that schools produce. Private schools generate demand from parents precisely because they meet their expectations of learning outcomes but the government continues to judge private schools based on input norms. In this context, it becomes fairly obvious that the private schools would struggle to survive in an environment governed by policy that is uninformed of the causes and effects that occur in the education economy. The ever-increasing penetration of free government schools is often the only primary premise that drives policy.

A basic understanding of economics will suffice to explain how artificially keeping prices low would mean that there is less competition, which would result in the fewer players in the market. In the case of education, the controlling of the fees charged by private schools is a result of the complaints against big private schools charging high fees. The controlling of fees, on top of other unreasonable regulations that private schools are expected to meet, has meant that smaller schools are struggling to cut costs and facing a dip in performance which would mean that they would close down sooner or later leaving the market to fewer private schools. Thus, while the control of fees by the government was intended to help the parents who couldn't afford the fees charged by big private schools, it ends up leaving fewer schools to choose from.

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