

Regulation and Informal Market for Schools in Delhi

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Sukanya Bose, Priyanta Ghosh, Arvind Sardana and
Manohar Boda



**National Institute of Public Finance and Policy
New Delhi**

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Abstract

The unrecognised school sector in Delhi has grown significantly over the years, and since long ceased to be marginal. The aim of the study is to understand the regulatory practice on the ground in this sector. According to the law, private schools must seek recognition from the appropriate authorities such that their functioning is aligned to public interest. Reading of the laws and an important Court case provides the background to the primary fieldwork on which the analysis is based. The results of the field survey indicate that unrecognised schools are growing unfettered. There is incentive for informality, regulation is totally absent and vested interests attempt to perpetuate the practice. The continuation of hands-off policy of the government vis-à-vis the sector despite the clear pronouncements in the Right to Education Act is explored from a variety of perspectives. Some suggestions towards formalisation are presented.

Keywords: Low fee private schools, unrecognised schools, regulation, informality in schooling, educational policy, educational law, RTE.

Regulation and Informal Market for Schools in Delhi

Sukanya Bose, Priyanta Ghosh, Arvind Sardana and Manohar Boda¹

One of the important ideas underlying the role of the State in education is the notion of education as a public good. Education generates externalities (benefits that spill over to the society at large), and these externalities mean that the social benefit far exceeds private benefit. Besides the intrinsic importance of education, which is valuable in itself and can affect freedoms directly, there are instrumental personal roles related to seizing economic opportunities, instrumental social roles related to democratic participation, instrumental process roles of education such as process of schooling can reduce child labour, and empowerment and distributive roles such as organising politically to get a fairer deal (Sen, 2000). The other rationale for public education arises on distributional grounds and takes forward the idea of non-discrimination and equality, essential aspects of the RTE. Public spending assume greater importance in societies and economies that are characterised with huge structural inequities of diverse nature and need state intervention to ensure redistribution of income opportunities and freedoms (Sen, 1992). In a society like ours stratified by class, caste, gender and region, and with ever-growing levels of inequality, public education of equitable quality for all has to be the norm, not only for equality of opportunity, also for strengthening democratic institutions and for social change.

When the provision of education is mediated through the market and purchased as a commodity, the intended outcome is no longer the larger public good, but private good. Maximisation of private good and positional good becomes the objective which would generate various negative externalities (disbenefits) for the public (Winch, 2018). A differentiated market for schools would reproduce and aggravate the existing privileges and create a stratified society, where all kinds of social ills or “public bads” may result. This is bad for all in the long run since a society that is riddled with strife and anger apart from huge differences in income and opportunity is being reproduced. Democracy is hollowed out by sheer inequalities in every field. The regulatory arm of the State then has to ensure that the public “bad” can be minimised and public good is promoted through the market process, and not be thwarted through rampant malpractices and commercialisation.

In India, the share of children attending private schools at the elementary level has gone up from 10.5% in 1995-6 to 28% in 2017-18, with some states witnessing as much as 35% shifts over the twenty-year period (NSS). The most alarming aspect of the increase is the growth of low fee private schools (LFPS) to meet the unmet needs of schooling of the poor, creating a large informal unregulated sector. It has caused scholars to view the reform pressure in education in India (and other low-income countries) as privatisation by default (Verger et al, 2016) and reform by retreat (Majumdar, 2017). As the State remains passive to the increasing demand or the newer forms of demand, market forces in education are growing rapidly in a sector that has strong public good elements.

In the largest cities, the variety of schools leaves behind every city in the world (Juneja, 2018). The result is a fragmented and stratified schooling sector. Delhi, the capital

¹ The research is sponsored by Azim Premji University Research Grant. We are grateful to all the interviewees in the field research, who spared their valuable time to speak to us. The names of places and schools have been changed for anonymity. Discussions with Dr Keshav Das provided valuable insights. We thank Dr. Nirmalya Basu for assistance in school mapping.

of India, has a large underbelly of LFPSs. A recent study (Bose et al, 2020) estimates that half of private school goers in Delhi are attending LFPSs. That is, the sector is not marginal but central to the privatisation phenomenon. A comparison across the two latest NSS rounds also indicates that the share of LFPSs in overall enrolment is growing. There is no official database on these schools, infrastructure and other facilities, children attending these schools, notwithstanding the very substantial and growing size of the market. There seems to be a studied policy silence and indifference vis-à-vis the LFPSs coming up. It amounts to public sponsorship of a kind of “urban informality” in the near total absence of any regulatory frame to monitor their educational credentials. (Majumdar 2017: p.62)”

This paper takes a closer look at the working of the LFPS market and its regulation (or lack thereof) by the State, in the specific context of Delhi. The focus is on the recognition question, which determines whether a school falls under the regulatory net or remains outside of it. We ask:

(i) What is the normative framework for regulation of private schools? This is discussed through the lens of a court case and the contestations in the interpretation and implementation of the laws.

(ii) what are the interests and forces that shape regulation, making it look the way it is regardless of how it should be? A field study located in an urban fringe and serviced by LFPSs, among others, provides the context for exploration.

(iii) The final question concerns what can be done to move towards a greater degree of formalisation.

I. Law and the Unrecognised Schools (URs) in Delhi

The RTE Act (2009) provides the legal framework for regulation of school education in India. While outlining the role of private schools in realising the right to education, the law considers *education to be a public good and a charitable activity*. One of the central features of the RTE Act is to delineate the school system in terms of clear norms. It defines the school system through essential norms keeping in view the public aims of education. These provide important benchmarks beyond which the system – comprising of public and private schools - will not be allowed to deviate. Further, to uphold the norms and ensure that the private schools’ functioning is aligned to the public interests, all privately managed schools have to get recognition from the appropriate authority. In the *Mohini Jain vs the State of Karnataka (1992)*, the Supreme Court of India had argued that the very act of recognition of private institutions created an instrument of State that could be used to deliver the obligations of the State.²

For schools in Delhi, Delhi School Education Act, 1973 (DSEA) was the principal Act governing school education, prior to the RTE Act. DSEA clearly lays down that schools can be run only by private charitable trusts or societies on a not-for profit basis. Surplus, if any, cannot be appropriated or transferred, but must be reinvested in the school. There are detailed provisions for granting recognition and for framing of scheme of management. Private schools have to abide by the norms for recognition of schools specified in the DSEA. An element of planning and state control is visible in the requirement of essentiality certificate for setting up a school. Teachers’ salary is to be at par with the salary of government school teachers. The Education Department has the

² Mohini Jain v. State of Karnataka, (1992) 3 SCC 666.

power and responsibility to regulate various aspects of establishment and running of private schools including regulation of fees, conduct of inspections, scrutiny of financial returns etc. In case of violation, the regulatory authority can withdraw recognition, after due process.

There has always been a gap between formal law and the actual practice on the ground, which is usually connected to the question of States' capacity and its priorities. The law never worked in its intended form, a point that will emerge repeatedly in this paper. Even recognised schools do not conform (partly/wholly) to the regulations that allow them to be recognised. In 1997, Delhi Abhibhavak Mahasangh, a federation of parents' association moved the Delhi High Court (HC) challenging the fee hike in various schools in Delhi.³ The grievance of the Mahasangh was that recognised private schools in Delhi are indulging in large-scale commercialisation of education which was against public interest. The Mahasangh further contended that commercialisation had reached an alarming situation on account of failure of the government to perform its statutory functions under the DSEA. The inspection teams appointed by the government on HC order had found many irregularities in management of accounts, and appropriation of surplus. The HC pointed out that the DSEA prohibited transfer of funds to the Society or another school run by the Society, which most schools were indulging in. In the SC hearing on the appeal by the association of private schools (Action Committee of Unaided Private Schools) against the HC ruling, the SC came to the same conclusion.⁴ It reiterated that private unaided schools must maintain accounts on the principles of accounting applicable to not-for profit organisations. Every year schools must submit and seek approval of the Government on the proposed fee structure thus emphasizing that commercialisation and profiteering will not be tolerated and that the government must monitor and regulate this aspect.

As the recognised private schools were challenging regulations on profit and other rules, the informal school sector was expanding across the country. Informal economy is defined as one outside the purview of regulatory law (Swaminathan, 1991), and exists for most sectors in the Indian economy.⁵ But for the informal tuition industry, the informal sector in school education more or less overlaps with the unrecognised school sector, as the latter are schools that have not been recognised by the State authorities in fulfilment of the conditions of recognition. Again, like much of the sectors of the informal economy, there is no official data that can give a macro-sense of the size of the informal sector in school education. Information pieced together from field studies indicates a rising tide towards URs in many states of India since the late 1990s and early 2000s (Aggarwal, 2000; De et al, 2002; Mehta, 2005; Banerji, 2000). Economic reforms had reduced the fiscal space and expansion in public expenditure and public investments had slowed. Governments at the Center and more so in the States came under tremendous pressure to compress their development expenditures and to contain the public sector wage bill. The demand for education was growing which meant a massive need for expansion of public schooling. Privatisation was allowed de facto, even though in many cases there was no formal change in policy. Within the state sector, informal centers were promoted, especially in far-flung and underserved areas, raising serious concerns for equity in education provision and social justice for marginalized communities. Para-teachers/contract teachers were recruited in government schools by diluting recruitment procedures, terms of remuneration and service conditions. Informalisation was promoted within the State sector and allowed to prosper outside the public school system,

3 Delhi Abhibhavak Maha Sangh vs. Union of India and Others, WP(C) 3723/1997.

4 Modern School vs. Union of India, (2004) 5 SCC 583.

5 The regulatory characteristic is the most widely accepted definition of the informal economy, even though there are many other characteristics of informality.

often, in violation of existing laws. PROBE (1999) notes that the rhetoric of education as a fundamental right has gone hand in hand with an unprecedented retreat of State commitment to universal elementary education (p.2).

Coming back to the specific context of Delhi, the proliferation of unrecognised schools (URS), their lawlessness and the neglect by the state was flagged in an important PIL filed by Social Jurist, a Civil Rights Group Versus GNCT & Others (2006), in the Delhi High Court (HC). It would be instructive to follow the case in some detail as it presents the complexity of the problem and the contending arguments of the state, the informal market and the formal position of law.

Social Jurist had filed a public interest litigation (PIL) in 2006 arguing that⁶

“there are nearly 10,000 schools in different parts of Delhi which are unregistered and unrecognised, run by private individuals, institutions and NGOs in which about 6,00,000 children between the age group of 2 to 18 years are studying in different classes between LKG to 12th standard.” These schools have been established and are being run without the permission of the Government and without the recognition of appropriate authority under the DSEA. Most of the schools are ill-equipped and are established in unsafe buildings. They do not have adequate accommodation for running the institution nor are the teachers employed for imparting instructions qualified. They are usually underpaid. The absence of playgrounds, libraries and laboratories in the Schools makes the position quite dismal for the children who are for various reasons including poverty and absence of proper schools in the neighbourhood forced to join these institutions. ..., Innocent parents and their children fall prey to the schools under the impression that they are recognized. More often than not, children passing out from these schools are denied admission to the next higher class by the Government or a recognized institution on the ground that they do not possess a certificate from a recognized school. ...The fees and other demands made by the schools which are said to be exorbitant and unjustified having regard to the poor facilities that are provided.” The petitioner requested for a Court order directing closure of all such unauthorised schools being run from unsafe buildings and framing of rules for regulating opening and functioning of all schools (under Section 28 of DSEA/ Rule 43 of DSER).

In its response, the State did not deny these observations. It agreed that there were a large number of schools in Delhi that have neither the permission of the government nor the recognition of the appropriate authority. These schools are running without proper infrastructure and at places that are unsafe for children. That being said, the government argued that it was helpless in this regard as the law doesn't empower them to regulate schools that do not apply for permission/ recognition. That is, only recognised schools fell under the purview of the Act and was under the regulatory control of the administrator, an interpretation that the HC held as completely erroneous. “The authorities have been wholly inactive and indeed oblivious of the powers and scheme of the DSEA, for whatever reason.” Pointing to massive failure of the State in enforcing the Act, it said that “the understanding of the authorities, including the Director of Education, of the true scope and amplitude of the powers of the administrator to regulate education have been erroneous and misplaced, what to speak of taking appropriate action in preventing mushrooming and consequent deterioration of school education in Delhi... Because of the hands-off policy of the government, these institutions are islands of authority subject to no control, inspection, supervision or direction of anybody/ authority. There is a

⁶ Social Jurist: A Civil Rights Group vs. Govt. Of N.C.T. Of Delhi and Another, WP(C) 43/2006, CMs 1819/2007 & 16275/2007.

total breakdown of the machinery which the Act envisaged for regulating and organising planned development of school education in Delhi.” (emphasis ours)

The HC made it clear that the administrator was competent to regulate education in *all* schools. And no new school can be established, no higher classes in a existing school started/closed down except in accordance with the provisions of the Act/Rules made thereunder. *The argument that the Act envisages two kinds of schools is thus erroneous. The Act did not permit two classes of schools as was the reality at present.*

On their part, the Delhi State Public School Management Association – another party to implead in the case - argued that the URSSs were doing great service and had become a necessity on account of the failure of the state to provide proper educational facilities. The Association argued that the right to establish a private educational institution/practice any profession or business was a fundamental right and only recognised schools fell under the regulatory control of the administration under the DSEA. In its response, the Delhi HC pointed out that the right to establish a private institution was not absolute but subject to reasonable restriction for public interest and that DSEA applied to all schools.⁷

In terms of concrete steps, the HC order instructed the government to undertake a survey and identify URSSs and call upon such institutions to apply for post facto permission and have the schools inspected to evaluate the infrastructural and other facilities available. Those who don't satisfy the requirements or fail even to seek waiver of compliance with the said provisions could be referred to local authority (MCD) for closure of the institution.

The government didn't comply with the order of the Delhi HC and, as if to aid the State, the Coordination Committee on Public Schools (CCPS) in Delhi - another society comprising of many unaided private schools - both recognized and unrecognized, appealed against the HC order in the SC.⁸ In order to “safeguard the interest of URSSs”, CCPS undertook much political advocacy. CCPS describes its efforts in facilitating negotiations with the state government to ward off policy that may threaten URSS (O'Hara, 2013: p 172). It campaigned for dilution of DSEAR, the rules under state Act, particularly, with respect to teachers' salary. It succeeded in creating a committee to review DSEAR (discussed in the last section), CCPS proposed classified recognition with lower standards to grant recognition to schools who did not fulfil the land area criteria. Thus, we see the coordination committee emerge as a dominant and influential interest group working to influence State policy.

In the meanwhile, the RTE Act was passed in 2009. Section 18 of the RTE Act prohibits a private school to open or function without obtaining a certificate of recognition. For the existing URSSs, the Act gave a generous window of three years to take steps to fulfil the norms and standards of recognition. The latter was an acceptance of wide scale existence of URSSs. The changes it brought about on the ground cannot be described as utterly insignificant, and yet it made little difference to the regulatory practice as we shall see in the following sections. Provisional recognition under the RTE was the new compromise that emerged. On instruction from the HC, the MCD had conducted a survey and identified 1593 URSSs. In 2013, the Directorate of Education, GNCTD (DoE, henceforth) invited applications from the URSSs in Delhi, as the three-year window under the RTE was coming to an end. It granted provisional recognition to 825

⁷ T.M.A. Pai Foundation vs. State of Karnataka, (2002) 8 SCC 481, the SC had held that the right to establish an educational institution can be regulated.

⁸ SLP (C) 21952/2008

private URSs functioning prior to April 2010. The inspections were to be conducted post-facto. The application was accompanied by modified land area norms for unauthorised/regularised/ underdeveloped colonies. Unrecognised schools in unplanned colonies running classes upto the elementary level and possessing land area of 200 square yard (upto primary school, PS) and 700 square yard (upto upper primary school, UPS) could apply for recognition. It was reckoned that this area would allow a minimum facility of 5 and 8 classrooms (PS and UPS) and other required facility as per the RTE Act. The other major relief came in the form of teacher salaries. Unlike DSEA, RTE didn't prescribe salaries in private schools at par with government schools. Schools had to furnish fitness certificate from the local authority for the building and no objection certificate for fire safety. All schools were supposed to conform to the norms and standards and conditions mentioned in sub-rule 1 of Rule 14 of Delhi RTE Rules, 2011, which reiterates the fundamental characteristics of the school as not-for-profit, running as per Constitutional values and subject to supervision by the authorities. A new category of school was thus born, those that are recognised under the RTE Act.

The trend in recognition of private schools in Delhi captures the one-time jump in 2013-14 (Figure 1). The jump in the number of recognised schools should not lead one to believe that the issue of unrecognised schools was sorted. Only a fraction of existing URS received provisional recognition whereas a large majority were left out. Many new schools have come up since, as we shall see from our field-study.

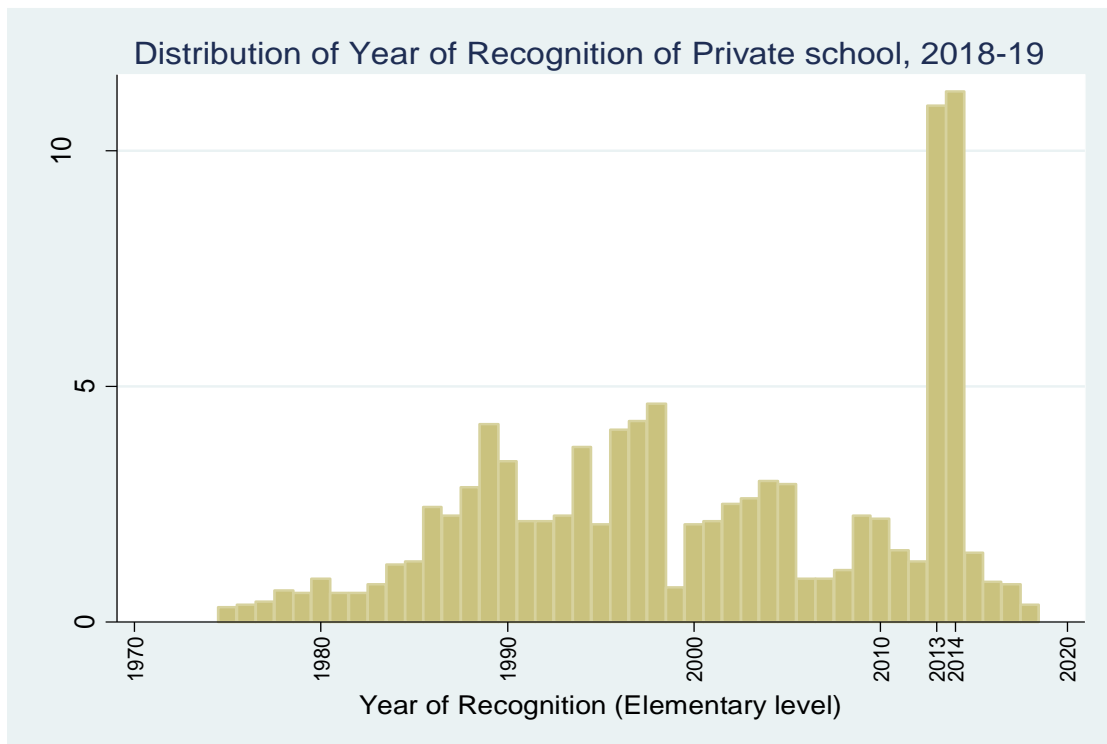


Figure 1: Recognition of private schools over the years

Source: UDISE, 2018-19

To roundup this section, the State hides behind two kinds of reasons to explain its non-action, and this draws different reaction from the Court. The first is that the regulatory authority is only responsible for regulation of recognised schools and URSs are not under their purview. The HC turns down this argument decisively and unambiguously

stating that the State is not aware of the true extent of its powers. It is the role of State to regulate the working of the private schools so as to bring it in alignment with public interest, through the grant of permission, recognition, supervision, inspection and other directions. The HC states categorically that the law doesn't allow/promote two classes of schools, recognised and unrecognised. And the State must regulate *all* schools. The second implicit reason is the underlying demand supply situation, which figures prominently in private school associations' petitions and makes the State reluctant to enforce regulations. Lack of State investments in public schools of adequate quality and in sufficient numbers lies at the heart of its privatisation drives, overt and covert. Since the State cannot provide, private schools are allowed, no matter if they operate without recognition. The Delhi HC, in a later judgment on the same case, acknowledges the paradox. "Though undoubtedly in terms of Sections 18 & 19 (2) of the RTE Act also, after 31st March, 2013 URS cannot in law function but we (The Court) cannot shut our eyes to the harsh reality, of the children studying therein being left without any school to go to, if a direction for immediate shutting down of the said schools were to be issued."⁹ On one hand the fundamental right to education implies that no child can be denied opportunity because of any antecedent condition, on the other hand, a ban on URS is required in public interest, so that all schools follow a minimum norm. The considerable size of the sector, makes it too big to close-down. The Court bends before the fact that such an imposition would affect a very significant proportion of children in Delhi. The situation has been allowed to grow, such that it appears irreversible. The issue enforcement of regulation is closely tied to the relative supply of public schools.

II. The Existing Literature

There is a substantial body of empirical literature on the phenomenon of LFPSs in India and other developing countries (Srivastava, 2013), some of which has dealt with the regulation question for LFPS sector. The new institutionalist framework focussing on institutional structures, rules, norms and cultures and their impact on individual behaviour is the common framework most scholars have used.

Srivastava (2008) in her study of LFPSs in rural Uttar Pradesh finds that the schools employed the shadow institutional framework, a codified yet informal set of norms and procedures, to operate as part of a distinct private schooling sector. Despite the fact that LFP case study schools were independently owned, managed, and financed, they used the shadow framework to manipulate and mediate the formal policy and regulatory framework for their benefit, and formed part of the de facto LFP sector, a sub-sector of the greater private unaided sector. Typically, the shadow framework either completely disregarded the formal framework or usurped it. Perverse incentives (different requirements for State and private schools; and long and laboured procedures) embedded in the formal framework made it difficult for LFPSs to operate in accordance with official rules and procedures. The author observes that, "Since perverse incentives undermining institutional commitment were embedded in the formal framework itself, the responsibility to rectify this fall on institutional actors. Currently, this seems to be a hopeless proposition since those actors with the bargaining power to create a new formal framework are the ones benefiting from the perverse incentives embedded in the existing one." (p. 472)

⁹ Social Jurist A Civil Rights Group vs. Govt. Of N.C.T. Of Delhi and Another, WP(C) 43/2006 decided 7th May, 2015 in the High Court of Delhi.

Another study on LFPSs – this one in the context of Delhi - emphasises how despite the absence of legal legitimacy, a ‘practical legitimacy’ arises from processes of negotiation by different stakeholders of their own positions and understanding vis-à-vis these schools (Ohara, 2012). This ‘practical legitimacy’ then helps the LFPSs to negotiate the blurred zones of ‘legal legitimacy’ that prevail due to contradictory regulatory provisions and a reluctance on the part of the State to enforce regulatory norms in practice (Ohara, 2013). Her study also brings out the strong contestation mounted by private school lobbies against changes in the regulatory environment. Similar to Srivasatava’s (2008) analysis, results of the study indicate common internal and external institutions across the case-study schools.

A study on regulation of LFPS serving low-income families in Hyderabad by Tooley and Dixon (2005) indicates that LFPSs in these contexts often gained recognition through informal practices and bribery, and not by meeting set norms (also see Rose and Adelabu, 2007; Harma and Adefisayo, 2013 for Nigeria). An inspector calls, but does not visit the classrooms. There are instances of bribery and this situation was remarked upon with candour by all including government officials, some of whom volunteered detailed information regarding the payment of bribes. The budget schools are thus largely unregulated by the State. And, conferring ‘recognition’ status on the schools becomes largely meaningless. The authors then argue for liberalising the regulatory system to create fewer regulations to remove incentives for corruption.

Tooley et al’s research has been highly influential in pro-market advocacy in policy circles to promote LFPSs.¹⁰ Deregulation is suggested as a solution to the capture problem, ignoring the fact that all well-functioning markets require regulation and school market is special for its public good nature. The constitutional provisions make schooling a not-for-profit sector. To create incentives to align the interests of holders of public office and powerful interest groups with public interest should be the objective. Self-seeking is not the only motivation as many research studies have shown (Chang, 1997).

An important analysis of the regulatory capacity and monitoring capabilities of the prevailing school system in India, not particular to LFPSs, by Mehendale and Mukhopadhyay (2018) begins by arguing that the institutional framework for school education is complex. It is beset by lack of capacity, ambitious targets, fuzzy goal setting, institutional design, reporting to multiple authorities etc. The institutional structure is also under-resourced (also see Saxena, 2019). The practice of regulation is neither standardised across different types of education providers, nor coherent across different types of government agencies, or types of regulatory provision. The compromise in regulation inside government in particular moves the system towards de facto deregulation. By seeking exemptions and not applying the same standards to State-run schools, intended regulation is paralysed. And the government is unable to check the practice on the ground. There is need of new regulatory frameworks to bolster the already weak institutional capacities of the State, the authors argue.

Framework for Analysis

From the above, it is clear that one needs to admit the role of institutions to discuss the LFPSs (and LFPSs does not exist in world of neo-classical economics). Alternate theories are necessary. The literature suggests that whereas the existence of regulatory norms on education in India can be explained from the standpoint of the ‘public interest theory’ (the purpose of regulation is the protection of collective welfare and public aims

¹⁰ Sarangapani and Winch (2008) present the philosophical and methodological critique to Tooley et al’s Hyderabad study.

of education, which may remain ignored by individual consumer choices), the actual implementation of the law indicates several shortcomings. Private interests may dominate regulatory processes. There is informal behaviour within the State, which is a general feature of large parts of the Indian economy. It can be unauthorised behaviour, that is behaviour not in public interest or behaviour which doesn't enforce the regulation which exist or rent seeking and corruption/ skimming of costs, or other 'technologies of power'. The literature cited above also seems to privilege the legalist school of thought in informal sector theories which argues that informal sector as comprised of "plucky" micro-entrepreneurs who choose to operate informally in order to avoid the costs, time and effort of formal registration (Chen, 2012). And, they hold the formal legal system responsible for it. It is argued that the inefficient regulatory intervention by the State generate adverse cost benefit ratio and incentivises pre-emptive development.

There are two other theoretical perspectives that ought to be integrated as framework of analysis, to make sense of the complex, widespread and growing phenomenon of informality in schooling. The first is the structuralist perspective, which posits the informal economy as integral to capitalist development with interdependence of the formal and informal sectors of the economy and one that is exploitative of labour. The large-scale unemployment, existence of surplus labour and low standards of living along with laxity of regulatory law create the perfect conditions for informalisation. Informality ceases to be a transitory feature of segmentation of the economy to become instead a phenomenon that crosses sectoral borders and is a necessity for the capitalist system as a whole, including the neo-liberal State. In case of schooling, the URS reduces the costs of basic education for the State, which would otherwise need to be provided through public education.

The other paradigm is the urban studies, emerging from geographers. They approach informal economy through informal housing, slums, settlements, land markets, etc. The informal economy has existed outside of planning in the past and continues into the present. The native settlement, the non-cantonment area was always "another" excluded from the rationalities of modernisation and planning and that concept of "other" spaces persist into the current era. In a recent work focusing on privilege and exclusion in the urban space, Nambissan (2021) draws on Soja's 'critical spatial perspective', with its attention on 'spatial' or geographical aspects of '(in)justice' and emphasizes that 'the spatiality of (in)justice ... affects society and social life just as much as social processes shape the spatiality or specific geography of (in)justice'. According to Soja, spatial justice 'involves the fair and equitable distribution in space of socially valued resources and the opportunities to use them' (Soja, 2009:2). Studies from the West have pointed to the complicity of education reforms in urban restructuring, including gentrification and disinvestment in poor neighbourhoods.

In analysing the LFPS market and its regulation, we find that several or all the theories that emerged in specific historical contexts are valid.

III. Primary Data Collection and Field Area

The fieldwork was conducted in Delhi over a period of one year (temporarily interrupted by COVID), 2019-2020. The aim is to understand the regulatory practice on the ground in the informal school market. Growth of LFPSs is observed within the overall

phenomenon of informality existing in the economy and it is studied in relation to the State policy/ action.¹¹

The following are some of the specific questions that the fieldwork tries to address:

- What is the nature of URSSs? Do schools have an incentive to recognise themselves? Under what conditions? How compliant are the schools? How does informality work?
- How has the RTE Act impacted the sector? What kind of pulls and pressures is witnessed by this sector?
- How does the hands-off policy play out on the ground and what are its implications?

The field work uses the interview method to explore the above issues. To understand the regulatory practice and policy, interviews were conducted at various levels - community, schools, government officials, and the political establishment at the local level. The interviews are long interviews conducted through unstructured/semi-structured questionnaires. Corroboration of facts by checking from multiple sources was a constant endeavour.

In Delhi, the primary schools are administered and recognised by the local bodies, whereas post-primary and some composite schools are under the DoE. We had discussions with functionaries from both the departments at the school level, zonal/district level, and the headquarters. The approach was to understand the local first and then integrate the perspectives at higher levels.

A census of the school in the study area was conducted. Among the secondary data sources, UDISE data for 2017-18 (the latest year for which we have identifiable school data) and 2018-19 provides the school level information on the State sector and the recognised school sector.

Field Area

Rengaon is an urban village, and Sarpur, the adjoining area from where a lot of the students come to study, is an unauthorised colony. Adjacent to these are planned colonies built by the DDA and private real estate developers. Rengaon was counted as a rural village till the early 1960s. The map of administrative divisions in 1961 names Rengaon as one of the 300 villages outside Delhi municipal corporation urban. It was notified as an urbanized village in 1966 when it came under the jurisdiction of Municipal corporation of Delhi (MCD).¹² Elderly locals narrate that the land in Rengaon and its adjacent villages, were purchased or acquired by the DDA at throwaway prices. It establishes Rengaon as an old habitation, which was transformed from a rural village to an urban space. The most significant way in which this old habitation has expanded is through the process of peri-urbanization, mainly on account of an inflow of migrant labourers from other states of India. As Dupont (2004) notes, population growth rate in Delhi has been remarkably rapid at around 4% per year to reach 12.8 million in 2001. Migration accounts for much of the

¹¹ In this paper, while we use the term LFPSs and URSSs synonymously, the two terms have different connotations. Low fee private school relates to school fee that the school charges and the facilities that it provides. URSSs denote schools not “legally” recognised by the regulatory authority. URSSs are a subset of LFPS. LFPS may be recognised or unrecognised. Having a recognition certificate doesn’t mean that those facilities are there. It is a legal position.

¹² Section 507 of the MCD Act deals with special provisions as to rural areas.

population growth. Concurrent with population growth in Delhi, there has been spatial expansion in every direction. The official area of urban agglomeration almost multiplied by four between 1951 and 2001. Population growth was faster in the rural peri-urban fringe of Delhi than in the urbanised area 9.6 %, per year against 3.8 %, respectively.

Urban villages are subject to great pressure on land and important transformations of their economic functions, morphology and population (Dupont, 2004). The habitat is transformed in response to the housing needs of the numerous migrants with low income who find in the urban villages rent levels lower than in other planned areas in the capital. Urban villages enjoy a special status and have remained outside the purview of most planning rules. That is, building regulations do not apply to these villages or apply in a minimal way.

Planned colonies are but a small part of the city of Delhi. According to sources, in the year 2000, less than a quarter of Delhi's population was living in planned colonies (CPR, 2015). The informal urbanisation of the periphery may take many forms.¹³ Rengaon at one time was a large village, from which Sarpur was carved out. Since Sarpur is located on what was agricultural land, residential plots are still not regularized and are not recognised by the municipality. Muslims from across the city moved to this area especially after the demolition of the Babri Masjid and the population of this area increased exponentially. Members of the Muslim community, residing until then in mixed localities began to migrate to this area for the sake of security.

Social Relations in Rengaon: The Gujjars, the landowning caste, are the dominant caste in the village. Some among them have risen to power and hold important political positions. Local councillor of the municipality and the member of parliament, both belonging to this caste, come from the village. There is a sharp class divide between the Gujjar landlords and working-class tenants who live in the single room tenement on rent. The tenants are migrants from Bihar, Uttar Pradesh, some from Rajasthan. Apart from the *Gujjars* and the class of *kirayedar* (tenants), the Muslim community lives in old Rengaon, a more congested part of Rengaon. The economic status of the Muslims of old Rengaon is not different from the *kirayedar* households.

Majority from the working class are employed in the unorganised sector, either as casual labour or as self-employed. *Beldar*, electrician, security guard, vegetable vendors, *Mali*, shop floor workers, *Rickshaw* pullers, sanitation workers, are some of the common occupations, besides housemaid roles for the women. Women are also employed in the local informal economy (*Zari* work, tailoring, etc.). These are jobs that are lowly paid, uncertain, irregular, with no security of tenure, or contracts. They are not paid statutory minimum wages, and are hired through contractors instead of being directly employed by the company. The contractors deduct a hefty commission. None of the workers enjoy any social protection. Employment is almost wholly in the informal sector.

Physical features and civic amenities: Rengaon is divided into various mohallas, named after the patriarchs/caste names. A nala (a fast-flowing drain) of industrial effluent waste runs through Rengaon; the land next to the nala is the cheapest and easily available. Some of the private schools in the village are located around this open nala, which poses danger to children's health and life. For the residents of Rengaon, potable water has to be purchased whereas water for daily use is manually lifted from the common borewell -

¹³ There are several types of settlement, JJ clusters, slum designated areas, unauthorised colonies, JJ resettlement colonies, regularised unauthorised colonies, rural villages and urban villages that comprises the unplanned part of the city.

controlled and operated by the landlords. Tenants are charged at a flat (and higher) rate for electricity. Sewage and solid waste management remains an issue.

Before turning to the schooling scenario in Rengaon, a few observations are in order. Informality in the school sector has to be understood within the larger process of urban informality, where various settlement types have emerged outside the “exclusive” planned areas of the city. And, access to various civic amenities, such as water and sewerage, are managed and negotiated through informal markets, rather than obtained as entitlements. There is, thus, a web of informality existing across sectors in the urban periphery, which houses the overwhelming majority of Delhi’s population. It is not surprising then that URSs, in the urban context, are situated mostly within these informal settlements, and not in the planned areas of the city. LFPS and who accesses it has both a socio-economic dimension and a spatial dimension. In the absence of proper planning and public investments by the State for setting up schools in these informal settlements, the LFPSs has emerged as a market response, supported by the State’s unwillingness to implement regulatory law. Like the State turning blind-eye to the informal sector in schooling, informal urbanisation and the inequalities in civic amenities, has a lot to do with the nature of the State and how State planning and investments have largely ignored citizens’ welfare for several decades. Excluding settlements from full services based on their legal or planning status has had the effect of exacerbating existing social and economic inequalities. Since access to these services is central to the most basic of capabilities, this amounts to differentiating citizenship (Heller and Mukhopadhyay, 2015). Insofar as deficits of service delivery are spatially concentrated, there is a very real danger that such spatially excluded settlements will harden into ghettos. When inequality is spatially clustered, it tends to produce its own deleterious effects such as an erosion of social capital, a weakening of social cohesion and an increase in criminality (ibid).

Schooling scenario in the urban fringe

What kind of educational opportunity is available to the children and is accessed by various social groups?

Rengaon has a government primary school (GPS), which runs in two shifts. Morning shift is for girls. Not so long ago, the primary school was a village school, but as the demand increased more buildings, more floors, more classrooms were added in the same compound, leading to what one has been called “slumming of the schools” (Menon, 2017). School playgrounds continue to be swallowed for more built-up spaces in existing schools. As per DISE (2017-18), enrolment in the GPS(boys) and GPS(girls) are 956 and 1167, respectively. The pupil teacher ratio is 51 (girls) and 43 (boys). Going by the RTE norms on one teacher per classroom and one classroom for 40 children, there should be 8 additional classrooms and several additional teachers. GPS(Girls) has a teacher-in charge acting as Principal for several years now.

Pre-primary section is limited in the government school, though recently another year of pre-primary has been added. Admission into the single English medium section is impossible without recommendation. The pressure on supply becomes even more acute in the higher grades, in the Higher Secondary school run by the DoE with enrolments in the range of 1700-1800 per shift (GBSSS and GGSSS). One reason for the excess demand is that Sarpur doesn’t have a government senior secondary school. It has small primary shift schools run out of Porta cabin. The situation in the area is not unique; supply shortage is a feature of much of the urban fringe but hardly gets discussed but for a few exceptions (Bose et al, forthcoming). Compliance to the RTE norms on reasonable class size is impossible with the kind of supply shortage. The public schools in Rengaon are accessed by the tenant households, with more than 50% of students coming from Muslim

households, living in Rengaon and Sarpur. Table 1 presents a brief profile of schools in Rengaon, both public and private.

Private schools began to come up in Rengaon and the surrounding areas in the last twenty years. According to a local resident, who now manages an NGO-run school (S7), there were no private schools in the early 2000s. Children would only go to the government school back then. Stratification was less, though access to the GPS was difficult for migrant households as the school would demand ration card/electricity bill. Gender difference was sharp, and never-enrolled children were aplenty.

Today, private school market in Rengaon and its neighbouring areas is highly differentiated with a variety of schooling options. There are two sought-after high fee charging recognised private schools (located in the planned localities adjoining the village), and a large number of LFPS dotting the landscape of Rengaon (and Sarpur). (Refer to Fig 2, Map of schools in the Study Area)

Recognised private schools (RPS_1 & RPS_2) are composite schools unlike the two other category of schools in Table 1. These are large schools going by the high enrolment and teacher strength. Both the schools are located on DDA land. Fees charged by these schools is at least seven to eight times the fee in LFPS. It may be noted that both the recognised schools figure in the list of non-compliant schools in the Reports of Justice Anil Dev Singh Committee (2012 onwards), investigating fee hike by private schools in Delhi. Whereas one of the schools – which is incidentally a religious minority institution – has permanent recognition, the other school – an even older recognised school – has provisional recognition status post RTE. Both are recognised by the DoE.¹⁴ RPS_1 has recognised school branches all over the city, RPS_2 has another branch in a nearby village which is an elementary school and acts as a feeder school to RPS_2. From Rengaon, it is the children of the Gujjar landlords who study in the RPSs, whereas the tenant households mostly send their children to the public school. Very tenants access the LFPSs for their children. Some families of workers, who migrated around seventies and eighties and might have constructed small dwellings, have made the transition to LFPSs.

There is a preponderance of LFPSs in the schooling options in Rengaon. All the LFPSs in Rengaon are unrecognised. The local label for these schools is “gaon” ka school (village school). There is a fair amount of variation in the size of the schools with enrolments ranging from less than a hundred children in small schools to relatively bigger schools with 500-600 children. All schools are effectively primary schools, with three years of pre-primary, though the formal display shows till class 8th. The pattern of enrolment across classes shows that most children in Rengaon exit the LFPS sector in class 4 to 5 to join the public schools. It is a strategic decision by parents, as admission to GPS in class 4/5 ensures automatic admission in the higher secondary school (GBSSS & GGSSS). All LFPSs claim to be English medium schools.

The median monthly tuition fees in LFPS is Rs 500 per month in Class 1 (range: Rs 500 – Rs 1000). This is close to the benchmark course-fee for LFPS in Delhi (see Bose et al 2020)¹⁵ In addition, there are charges like admission fee, annual charges, etc. Even with the comparatively lower fees, these schools are out of reach for most tenant households, or at best affordable in the early years when the fee is low.

¹⁴ As per information on DoE website

¹⁵ The benchmark course fee for LFPS (at 2019-20 price) based on NSS (2017-18) distribution of fees paid for attending private schools by households in the two lowest quintiles is in the range of Rs 550 - Rs 650.

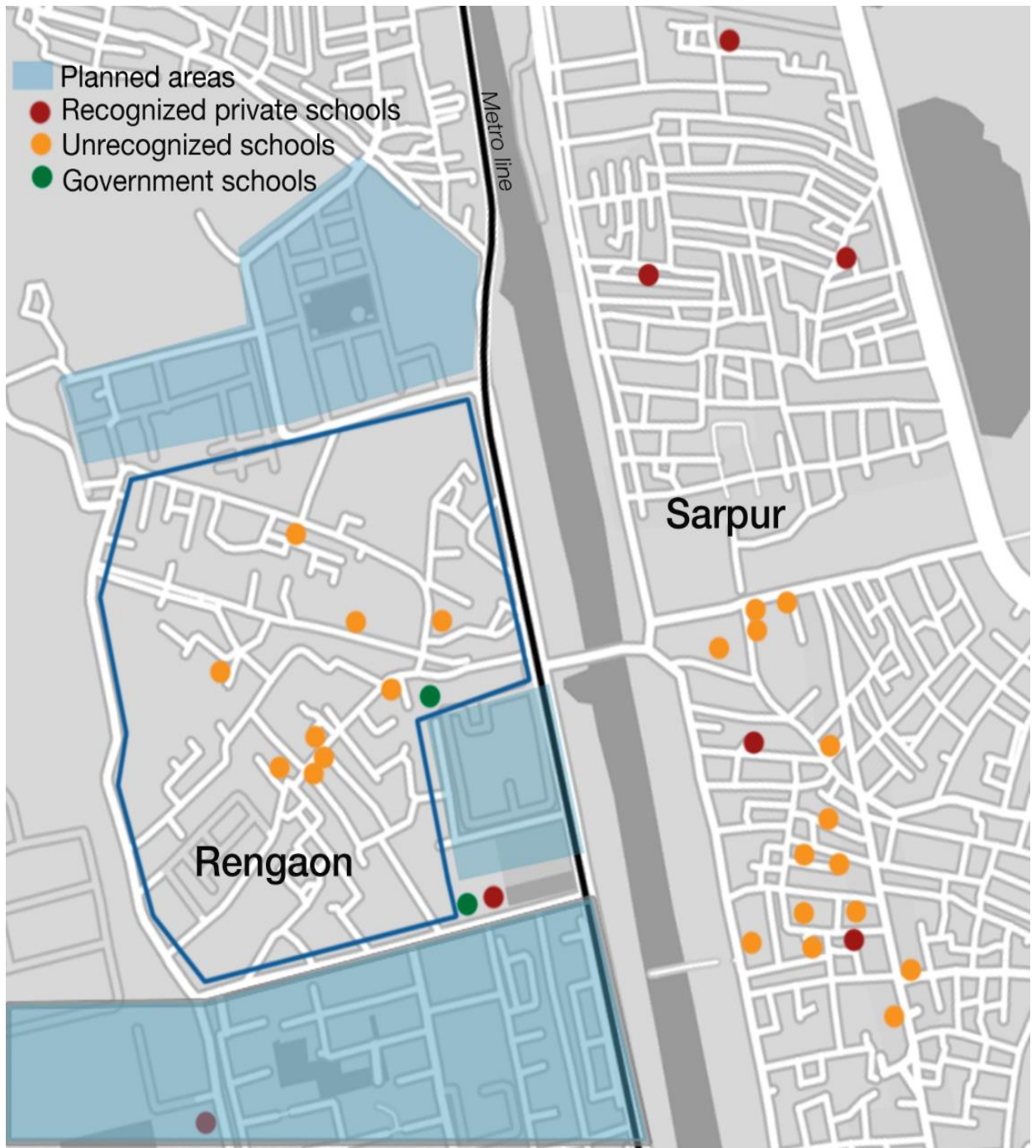


Figure 2: Map showing Schools in the Study Area

Note: The blue outline marks Rengaon, Both Rengaon and adjoining Sarpur fall under unplanned areas of Delhi. URSs dominate the schooling mix. Sarpur, which we have covered only partially in school mapping, has greater prevalence of URSs. (The markings also identify two URSs in Rengaon that closed around 2018. The buildings still carry the schools' signposts.)

Table 1: Profile of Schools in Rengaon
Government Schools in Rengaon

School Name	Year of Establishment	School Level	Enrolment (2017-18)	No. of teachers (2017-18)	SCR	PTR	Share of Muslim children %
<i>GPS (Boys)</i>	1949	Nursery to 5th	1278	23	53	51	56%
<i>GPS (Girls)</i>	2000	1st to 5 th	956	22	49	43	54%
<i>GGSSS</i>	2008	6th to 12 th	1837	49	83	38	67%
<i>GBSSS</i>	2012	6th to 12 th	1666	42	54	40	67%

Recognised Private Schools in Rengaon Vihar (adjacent planned area)

School Name	Year of Establishment	School Level	Monthly Tuition Fees for Class 1	Enrolment	Share of EWS Children enrolled	No. of teachers	Year and Type of Recognition
<i>RPS_1</i>	1991*	Nursery to 12 th **	Rs 2500	2460	9.9%	91	1991 (first recognition); 2011 (provisional recognition under the RTE); DoE Recognised
<i>RPS_2</i>	2005	1st to 12 th	Rs 4400	1557	23.1%	56	2007, DSEAR, Permanent. DoE Recognised.

* Relocated to Rengaon around 2004/2005; ** The school doesn't report pre-primary classes in UDISE though it runs pre-primary sections in practice.

Table 1 (Continued) Unrecognised Schools in Rengaon

School Name	Year of Establishment	School Level	Monthly Tuition Fees for Class 1	Enrolment	No. of teachers	Recognition status	Other Comments
S1	2002	Nursery to Class 5	Rs 600 per month	500+	12	Unrecognised, run by society	Recognition is under Process, as per the school authorities
S2	2010	Nursery to Class 5	Rs 700 per month	700	16	Unrecognised, run by society	The school claims to have applied for recognition in 2019.
S3	2015	Play to Class 8	Rs 500 per month	140	7	Unrecognised, trust is registered	
S4	2017	Nursery to class 8	Rs 500 per month	100	7	Unrecognised, run by society	It has several branches in a neighbouring village.
S5	2018	Play to Class 8	Rs 500 per month	150	7	Unrecognised	The school display reads "affiliated"
S6	2016	Nursery to Class 5	Rs 1000 per month	60	6	Unrecognised, trust is registered	
S7	2020	Nursery to Class 5	Yet to be fixed	Yet to begin	2	Unrecognised, trust is registered	Opened by an NGO.

Source: Primary data collection and UDISE (2017-18)

IV. Findings from the Fieldwork

Winch (2018) notes that market for school education in India is not a quasi-market (as in the West), but a real market in India. We find this to be an accurate characterisation of the informal school market with free entry and exit and a large number of enterprises/schools competing. Profit is the primary motive for the managers/entrepreneurs for starting a school. Profit margin may not be large though, and as in other informal sectors of the economy, accumulation in this sector happens through multiplication of units (Harris-White, 2014). We see a few of the Rengaon LFPSs having branches in the neighbouring colony. Since schooling is a differentiated good, the possibility of earning profits by tweaking some of the features would always exist. Increasing competition may reduce the profit margin, but it will generally be positive. Phillipson (2008) makes it explicit that "low cost private schools" is a school that has been set up and is owned by an individual or individuals for the purpose of making profit.

This is not to say that there aren't other non-profit motives, like the desire to do something for the society/upliftment of the downtrodden classes, reasons most heard

from the managers.¹⁶ A new school (S7) has been started by an NGO as a charitable school, whereas one of the older schools (S1) is also said to be NGO run, but appears to operate like a family business. There is a thin line separating the two and it is rather difficult to make-out even within a small sample philanthropic activity versus profit making enterprise, unless the financial statements are examined. It is to be noted that generally school managers combine a number of businesses, property and insurance business being the most common ones.

IV. 1 LFPSS: An Expanding Unregulated Market

The LFPSS sector has expanded rapidly over the past two decades in the study area. Many new schools have come up in the post RTE phase, including one at the beginning of 2020 (Table 1). In fact, most of the LFPSSs in Rengaoon were started in the recent years. No school was closed by the administration post RTE. This accords with the finding of Azim Premji Foundation's (2016) survey across several Indian states that there were hardly any school closures as a result of the implementation of the RTE Act. Schools have closed down, but for other reasons, as we shall see below.

As a one-time impact, the RTE (and the Social Jurist case), did give a push towards school recognition. In Rengaoon, none of the schools got recognition. There are five schools in Sarpur that were recognised under the RTE Act in 2014, whereas earlier there were only two recognised schools in that area (refer to Appendix Table A1 for the recognised private schools in Sarpur and Figure 2). However, majority of the schools remained outside the regulatory net. On a continued basis, one doesn't see RTE putting any pressure on the URSs to conform.

All the LFPSSs of Rengaoon are unrecognised; some are run by registered trust/Society as required by law. It is evident that there is no pressure from the department for recognition of the schools. Of the seven schools listed in Table 1, two schools (S1 and S2) claim to have applied for recognition, as per their school managers. We did not get a credible explanation on why they were applying for recognition after so many years of RTE, whereas these schools have operated since long. We were told that their files have been put up for recognition with the DoE and they have applied for provisional recognition from grades 1-8th under the RTE Act. According to a school manager, they have applied for recognition in 2019 through a middleman who is known to manage the URS recognition process. The claims of the two schools, however, could not be verified. The district education office had no knowledge of their application, which is a centralised procedure, coordinated from the head quarter.¹⁷ These two schools are likely to satisfy land area norms for recognition. So unlike the commonly held perception, land area is not a constraint for recognition of all URSs, a significant percentage do satisfy the modified land area norms.¹⁸ But there are other norms on which the schools may fail. For instance, fire safety clearance is a major bottleneck for school, S2, located in a narrow lane, where fire engine cannot access. The manager offered to bribe the fire safety office but was turned down.

¹⁶ Employment for the family is another important motive for such schools.

¹⁷ This may be warding-off strategy by the school. When asked, they say that they have applied but the middleman keeps the file pending.

¹⁸ This point also emerged in the MCD survey of URSs (GNCTD, 2012).

IV. 2 Schools on their own have little incentives for Recognition

Since the department does not exert pressure on schools for recognition, recognition in this case becomes a voluntary project. The large majority do not even apply. First, the distance from the official recognition norms is simply too large. Their chances of getting recognition are nil. Second, and more importantly, most of them also do not have an incentive to seek recognition from the authorities. They prefer to operate in the informal sector. Since parents find it difficult to distinguish between recognised and unrecognised schools - a point that emerged in the household survey - there is no additional perceived benefit to the school managers from recognition. Even the relatively better educated (class 10th /12th pass) parents of LFPSSs, were either unaware of the recognition status or were misinformed about the same. Essentially, parents are concerned about continuity. As long as continuity is ensured, parents do not care about recognition.

Compliance cost for schools includes several components. It includes costs of adhering to the norms set by the law in terms of infrastructure and trained teachers, and paying not less than minimum wages as salary. It involves proper financial accounting and maintaining bank accounts. It also means furnishing information to the department on (i) teachers' details/statement; (ii) information on students and their parents; (iii) UDISE form ; (iv) audited returns; (v) declaring EWS seats, etc. Schools may be inspected by the authorities. As a government official on the ground explained,

"Schools will need to spend money to obtain recognition. File has to be prepared, infrastructure has to be made, they will have to follow the guidelines - there will be costs involved. If without spending money and any kind of protection (label) there are so many children taking admission, why should they come under the government fold for no reason. Tomorrow someone will come and check, the deputy director can check.

The MCD fee is Rs5,000. There is a form regarding the norms that has to be filled, then there is an inspection where all things are checked and verified. From where does teacher's salary get paid, bank accounts are checked. So why would the URSs get themselves recognised! They prefer a status where no one would ask them to be accountable."

This was corroborated by many other respondents. The opportunity cost of recognition is not insignificant. Private costs outweigh private benefits, whereas the social costs of non-compliance are high. Unrecognised status gives protection to these schools from all kinds of regulation/supervision. Many schools thus would prefer to be small and to operate in this unregulated segment.

Informality provides schools flexibility of various kinds

In the context of COVID-19, many LFPSSs gave up the rented spaces. School after school became non-physical spaces, giving up their buildings to save rent as the school management realised that the pandemic would be a long drawn one. By October 2020, we observed that schools (S4 and S6) that were operating from rented building had traded off their off-line classrooms with virtual ones. Online classes were conducted from homes. Teachers' strength was slashed as the schools found it impossible to pay salaries without regular fees. As per the school management, the necessity of teachers has gone down in the online mode of teaching, which are no more than 30 mins to 40 mins sessions in a day. Such flexibility in folding up operations and restructuring in the middle of the academic session would not have been possible under recognised status. Some schools kept a few rooms to dump the furniture whereas the rest of the space was let out for other purposes. Most schools quickly converted into tuition center in line with the changing

market demand and to get around the government orders on school closure during the pandemic.

It was found that only where the school wanted affiliation, recognition becomes a norm in practice. That is, the incentive for recognition is tied to affiliation. Schools that are seeking affiliation to CBSE or any other board in Delhi have to seek recognition. At that stage the regulatory practice changes. Those schools that want to extend beyond elementary and want to hold public examination are the ones that seek recognition.

Across school examination Boards, the regulatory norms may differ. Schools that hit the regulatory bound under one examination board, may seek affiliation with another, giving rise to regulatory arbitrage. Affiliation norms for NIOS are different from CBSE, which has caused one school in Sarpur to seek affiliation for NIOS. Schools may even seek affiliation with neighbouring State Boards (outside Delhi).

If the plan is to limit the school upto class 8th, LFPS will not bother to apply for recognition, generally. There will not be automatic push towards recognition within the present structure. It then appears that schools would get themselves recognised only if there is an effective implementation of command and control type regulation (as against self-regulation).

IV.3 LFPS Sector appears to act as if no regulations apply to it

It is no surprise that non-compliance is ubiquitous in this sector.

Exploitation of informal labour - teachers who are overwhelmingly female, low paid and without formal contracts - is integral to the working of the unrecognised school sector. Informality is also evident in the predominantly cash economy; wages are paid in cash and fees are collected wholly in cash in the URSs. Teachers are untrained and do not receive any kind of in-service training. The university being close, schools in Rengaon and Sarpur, at times, manage to get qualified teachers, who are waiting for a proper placement, for a few months/year. The turnover of teachers is naturally very high. The entire recruitment process is informal though teachers may be asked to take written exam besides interviews. Teachers' salary in one of the URSs is Rs 6000-7500 a month, depending on qualification and class taught. It is a third of the minimum wage for skilled labour in Delhi. The salary is often irregular, paid every 1.5-2 months. There is no PF or any other benefit. There is no letter of appointment stating the terms of employment.

When it comes to working conditions, these are sweat shops with teachers as footloose labour. It is the flexibility in costs and the unregulated nature of their functioning that allows these schools to charge a low fee, even while maintaining a profit margin. Describing her conditions of work, a teacher said,

"I taught in the school for a month. There was no chair for the teacher. Plus, whatever was taught to the student in class would also have to be copied for the children as homework. In every class one had to check the notebooks of 50 children every day. The instruction we got was "Homework question utaar ke dena hai." For those children who were absent, teachers would have to write all the pending work in their copies - both classwork and homework. There was no way to sit as there were no chairs. If the school time was over and copy checking still incomplete, we would be made to sit on the porch and do it (the premises being used for another purpose). There is no teacher's room where we could discuss. And no period was ever free, we had to take all the periods. Also, the timing was long, so I left the school.

In my present school, though I have the same salary, the timing is good... and the pressure is less. One class has 25/30 students. I have a chair to sit. Toilet is proper and functional. This was not the case in the previous school. I would feel suffocated. The rooms and toilets would stink, and the classrooms were dark and small."

We found that school buildings large and small flout norms. Take the two LFPSs with the highest enrolment in Rengaoon. S1 has a five storeyed building which is not allowed under the school building norms. The building of School S2, doesn't have the requisite building material and structure. It is located next to a fast flowing "nala" raising safety concerns. One of the School Inspector, acting on a complaint had ordered for this school (S2) to close. However, that order was overturned probably using local connections, as the owners of the school are close to the local body representative. In fact, all the schools managers that we spoke to had connection with the formal school administration (some of the owners being former teachers or Principals in government schools or recognised private schools) and/or with political parties. This helps the schools negotiate with the State apparatus, in case of any problem.

Most of the other schools in Rengaoon are running in 60, 70, 80, 100 gaj areas, whereas the minimum area requirement is 200 sq yards for primary schools. As one school manager of the relatively larger LFPS remarked, *"the classrooms in the smaller LFPS are such that if there is a power cut, one child cannot be distinguished from another"*, a description which is not an exaggeration for majority of the schools surveyed.

An official, on the ground, elaborated, *"Now every person opens a school for their business - buy 50 desks, take 4 rooms, if you do not have your own rooms take it on rent, you appoint anyone as in-charge, and the shop starts running (dukaan shuru). They are not following any norms of education. They have no permission for fire safety. There is no permission for water supply. There are no proper washrooms, there are no separate toilets, there is no provision for drinking water. Fire cylinder also is not there. Children's safety and security is a big issue - what if anything happens. Every month fees are coming; untrained teachers are teaching..."*

The room is supposed to be 18x22.5 feet. There are certain conditions laid down about its size, foundation, roof, structure. None of that is followed."

Operating in Light and Shadow

A school may operate in light and shadow. That is, there are schools that straddle formal and informal sectors. Most of the schools in Sarpur that are recognised till 5th /8th, run upper primary/ secondary classes informally. Classes happen in the same school, whereas the children are formally enrolled in another recognised private school. The recognised private school to which the school attaches itself would belong to people whom the owner/manager knows and trusts - an acquaintance, a relative etc. This mechanism is also adopted for issue of transfer certificate (TC) for classes beyond 8th. The attachment of an URS to a recognised school is a practice common to many contexts and figures prominently in the discussion on shadow institutional framework (Srivastava, 2008; O'Hara, 2013). Through such arrangements, schools can retain their client base and promise continuity to parents who are looking for composite schools. The recognised schools have an interest in such attachments.

As a matter of fact, the URSs derive traction and legitimacy from the lack of adherence and resistance to regulation in the formal school sector. Besides the non-adherence to rules, the private school sector led by private school associations and pro-market advocacy groups have constantly complained against regulations on transfer of

profits and use of school property, restrictions on the autonomy of private schools in employment, payment of salaries, dismissal of teachers and fee increases. The ethos of non-compliance does not go unnoticed by the URSs, it makes them bolder. The two sectors and their workings are closely related.

IV.4 Accommodative Stance of the GS ensures Continuity of schooling for children: Contradictory pulls of policy

In the study area, children from the LFPSs move to government schools, generally, even before they complete primary grades. There is a small likelihood for children to move to recognised private schools from LFPS. With progressive increase in fees across grades in URSs, parents find it hard to continue private education. DSEA (1973) provides for admission of children from URSs with a minimal requirement of affidavit from the parents, in the absence of transfer certificate (Rule 141, DSER). This clause has allowed an accommodative policy wherein children from LFPS can make a transition into GSs. With the RTE, this process has become simpler. The RTE makes it mandatory that every child be given admission in the public schools at the elementary grades such as to adhere to the fundamental right to education irrespective of antecedents. Our own observations, along with the interview responses, confirms this point. During the pandemic, many parents hit by adverse economic conditions and job losses moved their children to the GS with relative ease. In the municipal schools at the primary level, children coming from LFPSs were being admitted across grades without any TC/report card during the 2020-21 session.

Similarly, in the post primary stages, children from LFPSs can get admission under the non-plan category in government schools run by the DoE.¹⁹

“There is no question of denying admission. Everyone in the area is admitted. We do not ask for transfer certificate (TC). Their (LFPS) TC has no value here. These schools get themselves affiliated from UP, MP, etc. They are not CBSE affiliated schools.” explained teacher-in-charge in GBSSS, Rengaon.

Thus, despite the informal status, LFPSs are integrated into the recognised school system. The assurance of continuity is important for parents who are then willing to send their children to LFPS in the early years for “better quality” “proximity” “individual attention” “strong base” “English medium” etc. This ease of access allows children to continue their education and the spirit of RTE is maintained but this also provides an important motive not to seek recognition.

In the next few sections, we turn the gaze towards the regulator.

IV.5 “We are not going after URSs”: The Order from the Top

The signal from the department is clear that we are not going after URSs. None of the URSs in Delhi have been closed by the department, the department claims. In fact, we find that despite the sharp rap by the Delhi HC (refer to Section 1), the view and understanding of the law vis-à-vis URSs remains the same as that deposited before the Delhi High Court (2008). The department refuses to engage with the URS sector. There is

¹⁹ In the DoE schools, admissions happen under two categories: plan and non-plan. Plan admissions generally cover students from the municipal feeder schools, and they are given priority. The non-plan admissions are for children from private schools. In Rengaon, however, we saw that children seeking admissions from RPSs in Sarpur were also being considered under plan admissions, whereas the students from URSs fall under the non-plan admission.

a status quo in the hands-off policy of the government contrary to the clear pronouncement by the Delhi HC on the matter. The same arguments on lack of regulatory authority vis-à-vis the URSs is heard everywhere. The officials claim that they lack authority under which they may enter any school for verifying whether the school is running satisfactorily. Their role only kicks in once the schools apply for permission/recognition. *“There are many schools that are running in gali-mohalla - they do not satisfy criteria - they will not apply - we have no role there.”* Regulating URSs is not their responsibility. Nothing has really changed.

Absence of Data

There is no inventory of URSs in the official records. UDISE database doesn't cover the URSs of Delhi. We visited many offices in search of school mapping data on URSs. The administrative structure of Delhi makes it complicated to obtain information. The searches, which includes filing RTIs, didn't yield result. Clearly, the school mapping exercises ignore the URSs of Delhi. The lack of information is deliberate. Door-to-door campaigns are conducted periodically by school teachers, cluster resource coordinators, etc. for enrolling out of school children, which means that obtaining this data is not difficult. A cluster resource coordinator of the SSA shared that he was once asked by a senior officer to persuade URSs in that area to apply for recognition. But this is not a matter of policy, he added. “Informal” remains a taboo concept in policy.

The the hands-off policy by the administration creates dilemmas for the lower bureaucracy. In Rengaoon, an URS with substantial strength was closed by the local body, two to three years back. A rival LFPS competitor, losing its market share to this school, had allegedly filed a complaint. The complaint cited unsafe conditions of operation of the school and the dangers of the site next to a fast-flowing drain carrying water from STP. After inspection, the local body ordered the school to shut down, whereas there are other schools which continue to run in similar conditions. Individual defaulters may be punished in response to “complaints” whereas the system of non-compliance continues. Government responds to complaints against individual schools rather than any planned action. The lack of regulatory framework and coherence in government intervention is noteworthy.

As an official in the education department remarked, “Education becomes industry, a small-scale industry, there are so many private schools running. The government has no policy to check them and to regulate them. And the people are suffering. There are so many types of complaints being lodged by the people. Though they are not in our jurisdiction yet we are dealing with them. For example, if there is any grievance against an URS, we have to solve it. If there is violation of certain fundamental rights of the children, then being a part of the government, we have to take action against the management.”

The same sentiment was echoed by another official from another district. “we have to respond to complaints. There are so many portals to lodge complaints, we have to take action then. We have to tell what action one has taken about the complaint.” Interestingly, we learnt that, there is another clientele for URSs which service the absolute upper end of the income spectrum and when complaints come from such parents, the department is obliged to respond. There is no getting away.

IV.6 Missing Inspections

None of the schools that we visited, including the schools that obtained provisional recognition are inspected. We found that private schools are not inspected in

Delhi, though DSER, 1973 provides the modus operandi of inspection in great detail (Chapter 17). Regular inspection by the department is limited to the government schools and aided schools. Inquiries are conducted on complaints against private schools. Otherwise, inspections in recognised private school is limited to inspections for recognition or renewal of recognition. Private school managers/principals confirmed that their schools are not inspected. UDISE data corroborates it.

The lack of inspection and scrutiny means that all oversight function of the government is disabled. It has produced a large number of distortions in the system. Justice Anil Dev Singh Committee (2012) unearthed major accounting frauds that the recognised private schools indulged in. It pointed to the complicity of the auditors and the failure of the State in monitoring and supervising these schools. The scrutiny brought to the fore widespread culture of non-compliance on the part of the market players and deliberate neglect of regulation by the State.

In the context of schools that have received provisional recognition under the RTE Act, CAG Audit (2017) noticed that though these schools did not fulfil the terms and conditions of recognition as per RTE Act/Rules inter alia involving submission of requisite certificates of registration, health, safe drinking water, structural stability/building safety, fire safety and land of school not being Gram Sabha/forest land, the provisional recognition was extended from time to time... Further, 771 of these unrecognised schools were not found eligible and not granted recognition but instructed to prominently display their status as unrecognised on the entrance board instead of being closed down. The Directorate did not conduct any inspections to ensure compliance with these orders.” (p. 24)

The system is thus perpetuated by not inspecting the formal recognised and not counting the informal. The remaining discussions in this and the following sub-sections attempts to unpack the various reasons for it.

The shortage of administrative and other staff is an important feature that must be considered to understand the regulatory situation. On the supply side, the lack of personnel even to supervise and monitor the public system is deficient. Like the zonal offices of the education department run by the local body don't have adequate clerical staff. Those among class IV staff, who are better educated, are doing the job of the clerks. Senior principals are posted as school inspectors (SIs) temporarily, an arrangement called “look-after” charge, since the school inspector positions are not filled. Naturally, those in position have a lot of burden. In our study area, three SIs were inspecting about 150 public schools, whereas as per design there are more posts and earmarked roles for inspection of different aspects of school functioning. The lack of adequate staff at every level extends to the headquarter of the education department of the local body. Under the circumstances, the reluctance to take on more responsibilities in the form of regular inspection and monitoring is not wholly unusual, even if policy dictated it.

IV.7 Markets within the State

Although informality often arises in the absence of State regulation or when the State capacity is limited, States also voluntarily support informality when it benefits them. If the State is profiting from informality, it is unlikely to encourage formalisation. This aspect of markets within state noted in several studies, was acknowledged by the officials of the Department.²⁰

²⁰ Also see <https://ccs.in/licenses-open-school-it-s-all-about-money>

For the regulator, unorganised is an advantage. That is the fertile land for corruption and various malpractices. “*Wo hi to ghode ki ghaas hai*” explained an official. The large organised sector schools will not oblige the regulator. They have taken land from the DDA, and they are affiliated to CBSE. But those who are yet to be recognised “manage”. And for vested interests in the official ranks, this provides a golden opportunity to gain from. For the small schools - who are wanting to come into the recognised sector - one can squeeze them for money at any point of time. The system of “cuts” is present from the bottom to the top. That is the reason, according to the official, why one gives temporary recognition for three years, instead of regular recognition. If the file is put up every three years, then the corruption and malpractices continue. Every time the file is put up, money flows. The official logic for this 3-year recognition cycle is that one must maintain quality. But then it opens a space for corruption in bureaucratic decisions. At the individual level (private interests), some would lose out if the informal becomes formal.

Another official agreed that there is red tape involved. “How long it takes to gain recognition once a school puts up a file depends on how many wheels one has to attach to the file. They sit on the file, whereas it should be time bound. For schools where they do not want to give recognition, shortcomings will be found on purpose.” It was reported that there is no online transparent process whereby the information on recognition application can be accessed. Lack of transparency and accountability perpetuate the system.

Though we didn’t come across instances of bribing in URSs – verified across several schools – the red-tape in recognition process acts as a disincentive for schools. Since the relatively big schools have not got recognition, they argue, what are our chances. This adds to the other dis-incentives, noted in the previous subsections, pushing the school system towards informality.

In the context of Delhi, Atishi (2020) flags the deep politician–private school nexus. “The list of major politicians owning and/or managing private schools is long. There is an obvious conflict of interest at play. A political establishment that profits from increasing enrolment of children in private schools has a vested interest in keeping government schools dysfunctional,” she notes (p. 56). Indeed, the long-sustained inaction or looking the other way can’t happen without political support.

IV.8 URSs are doing what the Government Cannot do: The Underlying Supply Shortage

We noted previously that the managers of LFPS, without exception, project the business of running a school as social work. The motivation for starting a LFPS is to do social work and provide “quality” education for the children from “poor households”. The services are for the poor children and their own children do not attend these schools, a trend in common with the public schools where teachers in public schools do not access the system for their wards. As the better-off sections in the society exit the public system for expensive private schools, it is the households without exit option and with little voice who are left in the public schools or their close substitutes, LFPS (Hirschman, 1970). The latter are founded on small capital, with the ostensible purpose of social work to serve the education needs of the poor children.

This welfarist view of LFPSs has currency at the local level and percolates into the official circles. It is projected onto the underlying structural demand-supply conditions and the fiscal pressures to legitimise the growth of the LFPS. The perception that schools

serve the poor gives them a certain indemnity against charges of profiteering and a moral standing, though people *know* that these are not voluntary or so called “philanthropic institutions”, a la NEP (2020), but profit-making enterprises.

As an astute political worker explained,

“The schools are doing good for the society, even if they are running the schools illegally. Where will the children go? There are simply not enough schools. What will happen to these children if these schools close down. *Sarkar sab jaanti hai* (The government knows it). Here there is no water connection. What people do is to draw groundwater and refine it through RO and use it. That way people can have water, even though it is through illegal means. The government knows that it is illegal but must look away. The same is the case for schools.”

The practical or moral legitimacy allows the URSs to continue their business, even when there is no legal legitimacy as Ohara (2012) stresses. An organisation may deviate from individual values yet retain legitimacy because the deviation draws no public disapproval (Schuman, 1995 cited in Ohara, 2012).

An official in the department argued that, “The objective of the (LFPS) school is to teach children - poor and downtrodden - the objective of the school is good. But the means to achieve the objective is not good....the government is not in a position to incur all the pain and finances required by the people. We do not have so many schools to cater to the needs of the children. In Sarpur, if there are ten government schools, these will be filled with children so thickly populated is the area. Since the government was not in a position to open schools to cater to the needs of so many children, hence these schools were allowed to open.” We found that teachers and the school administration in the public sector are not unhappy that many children are going to LFPS as that reduces the classroom pressure in their own school, especially in an area like Rengaon.

Another official, circumspect about the motives of LFPS agreed that there is no alternative given the demand and supply conditions. “The schools which have opened but do not want recognition also, those are running purely from a business point of view. This is not even business, you can call it a “shop” where someone is selling a commodity....It is, however, difficult to close them. Where would you put these children? Take the example of the Rengaon school. There are 2000 kids, there aren’t enough rooms. Children are sitting on balconies. It is not as if the department is not providing any facility. There is no land there.”

It must be said here that we didn’t come across voices asking why the public-school supply is not being ramped up substantially. There is no challenge to “the resource constrained view of public provisioning” on the ground. No one is asking why such and such space has not been used for expansion or creation of new schools. The fact that, even in the recent years, substantial tracts of land in the area went for construction of metro railway or for the DDA sports complex, or sold off to private builders, is not questioned. Neither parents nor the community are asking for better Public Schools. Since the State cannot provide, a market for schools is allowed and left unregulated.

A notice displayed in the local councillor’s office reads, “do not approach us with requests for admission in private schools”. We were told that in the first quarter of the year, the office sees a massive turnout of parents requesting for admissions into private schools. The Councillor can accommodate only some children and that creates ill feeling amongst the parents. The office of the local Councillor, the most accessible political space, is used not to improve the conditions in the local School or to ask for another government

school since the present school is running beyond full capacity. It is hijacked by the political economy of privatization, which serves the interest of a handful of parents and small/large capital and relieves the unresponsive State of its responsibilities.

Summary

We began by looking at the nature of the unrecognised school sector. The sector comprises of small capital operating for profit, self-employed and hiring wage labour along with family labour, and existing outside the State's regulatory fold. We found that the sector operates as if no regulatory law applies to it. There is free entry and exit and minimum standards of size, structure, safety, facility are absent in an overwhelming number of cases. Since transition from a private elementary URS to public schools is made easy, there is no self-incentive for the schools to apply for recognition. However, for schools that seek to go up to class 10/12 & desire to be independent, affiliation with the examination Board for public examinations becomes imperative. Otherwise, the informal & formal are neatly integrated with no incentive to seek recognition. Under the circumstances then, compulsory recognition must necessarily be a coercive command and control mechanism.

The regulatory policy on the ground is quite the opposite and may be described as a policy of looking away. The order from the top-level government authorities is clear: "we are not going after URSs", which is a contravention of the RTE Act. While the RTE along with the Social Jurist versus GNCTD court case, did nudge the State to exert pressure for recognition, it remained a one-time exercise of provisional recognition for a set of schools, with neither inspections nor closure of defaulting schools. It was not a turning point. Since then, many new schools have come up in the sector and URSs have continued to expand. We found that the official understanding and position on the regulatory role vis-a-vis the URS has not changed from the hands-off policy, noted by the Delhi High Court (2008). Arguably, this policy sits comfortably with the market situation of excess demand on the one hand and private capital pushing supply in all shapes and sizes drawing its legitimacy in the shortage of public supply of education.

Overall, the informal market in schooling is thus growing and not transitory as the structuralist would remind us. Both formal private and formal public depend on the informal market and the informal is wired into the formal structures, though remaining outside it. There is evidence of markets within the State and private interests subvert public interest as a lot of the literature on regulations in developing countries suggests. However, what the analysis here emphasizes is the bigger phenomenon of the soft accommodation of the market by the State through looking away which has its roots in the state of public supply of schools, among other things. Lack of regulation is linked to the LFPSs doing the work of the government and the order from the top. There is a de facto acceptance that supply will come from informal private sources. Even the clear stance of RTE hasn't changed this. The erosion of public interest and denial of rights is much larger than the limited sense of corruption by some officials.

V. Towards Formalisation: Search for Alternatives

"Despite pervasive institutional scarcities that result from pervasive cultures of non-compliance, this undermining of the public sphere is not due to lack of State capacity. When it wishes to, the Indian State is capable of achieving ambitious regulative, developmental and democratic objectives. The unavoidable conclusion is that the State doesn't intend to enforce regulative compliance but deliberately allows small capital to flout disciplinary law

and effectively undermine authority and the State intends to do likewise in much of its regulative, redistributive and developmental activities.” Harris-White (2014, p.23)

It is an accurate prognosis of the State’s stance vis-à-vis unrecognised school sector which has suffered not just from failure of enforcement but non-decision making.

Writing soon after the RTE was passed, O’Hara (2013) had looked at the legislation with apprehension for the URSs. There was apprehension that RTE would be forced on the URSs and unofficial recognition by the authorities of the falsely recognised schools may increase, rather than the desired outcome of greater compliance of URSs to formal rules and policy framework. Because of the push for recognition many would slip through under the ropes and the cohort of falsely recognised schools would increase. It was also feared that URSs would close because of the RTE act which would hamper the right to education of children as URS have added to the total supply of schools.

From what we observe, it hasn’t played out that way. If anything, small capital has been much more resilient and organised against regulatory control. RTE has proved to be a paper tiger as far as URSs are concerned. As a one-time measure, the RTE act did push some URSs to seek recognition. In what is labelled as “classified recognition”, a separate category of schools was recognized with lower regulatory standards. An amnesty was given to the schools so that a larger proportion of schools would come under the regulatory net. As reported by CAG (2017), many of those recognised, do not satisfy even the lower recognition criteria. Majority of the URSs continued as such and their tribe has only grown in the absence of any policy to govern and regulate them.

It has been noted that beyond explicit and proactive policies, the politics of non-decision making are an important driver of LFPS growth (see Bonal, 2012). Non-decision making is an important way of exercising power; it involves suppressing challenges to the status quo or addition of new issues to an agenda. It is to maintain a “mobilization of bias” which essentially involves suppression or thwarting of latent or manifest challenge to the existing “interests”. Instead, the scope of the debate is limited and contained to issues perceived as “safe”.²¹ Back in 2009, the DoE reported to the court that the government committee consisting of concerned authorities had been set up to formulate guidelines for URSs with respect to the land, infrastructural facilities and teachers’ qualification. In 2015, a similar statement was made before the Delhi HC on another appeal by the Social Jurist. It is now 2021, and no policy has been formulated. It leaves a major section of schools and children studying therein outside the regulatory fold defeating the public aims of education.

What could be some necessary steps towards formalisation is an important question to ask, even though such a project will be riddled with many challenges. How does one move towards formalisation? The following paragraphs explore some options of what should and what should not be attempted.

Creating a Database: The first step is to create an online database. This could be done by making it mandatory for the URSs to register with a national online registry. It is best done through the local bodies and CRCs as tracking their existence and other activities would not be easy to monitor by a higher stage of government. One could design a simple format that includes a unique ID for every URS. Without this registration, the school must be closed to function. There is no guarantee that all LFPS would be willing to register (as has been the case with Udyog Aadhaar portal of informal micro units in the MSME

²¹ The present elected government in Delhi has won accolades for its school reform programmes in government schools. It has made significant efforts in enforcing Section 12 (1)(C), RTE Act towards admission of children from disadvantaged groups in private schools (NCE, 2018).

sector). But that's the challenge to face. Mechanisms to make this work must be worked out. Also, periodic surveys of URSs are necessary. Unless there is a survey of the sector, one has no real idea of what the true bottlenecks to recognition are.

A school mapping exercise, involving the local community, SMC members, government school teachers and ground-level administrative staff is essential. It is mandatory under RTE Act (Section 9(D)). A proper inventory of all schools would help in planning, supervision and to raise awareness among the community about their educational rights, including the right to attend a recognised school that meets the minimum standards. References, in some official documents, reveal that some of these obvious steps have been proposed but not implemented.²²

Recognition and Inspection: Lack of a policy framework applicable to URSs prevents the administration from governing the sector. The Delhi HC (2008) had given directives regarding post-facto permission, inspection, recognition, waiver or else appropriate action against URSs by local authority. These measures were not taken. It is important to revisit the steps suggested by the Delhi HC for possible solutions. Given the unpopularity of the task at hand, democratically elected governments do not want to touch the sector. *Court monitored exercise to decide recognition and closure may then be the only effective alternative.*

Admittedly, the URS sector has become too big to ban. Hence, a corrective compromise solution is required. The committee to review the DSEA, 1973 (GNCTD, 2012), chaired by K Shailaja, walked a tightrope balancing the guiding principles in RTE with the situation on the ground. It argued for the need to relax norms for recognition and other changes to allow more participation of private schools. (i) As long as the basic requirements spelt out by RTE '09 are met and the norms for teacher's qualifications are fulfilled, the maximum number of schools should be considered for recognition. The Committee sought to ease the requirements of space etc. specified in MPD-2021. These recommendations were the basis of grant of provisional recognition to schools. We have not seen any evaluation of provisional recognition given by the DoE to over 800 schools. The CAG report has pointed to the non-compliance to statutory requirements. A proper review is called for. (ii) The Committee suggested deletion of Rule 141 of the DSER, 1973 which deals with admission of children from URS to recognised schools, as under RTE, URS will not be in existence as per the law. This has not been implemented. (iii) Noting that there are delays in recognition, it would be necessary for district-based committees to consider all applications for recognition of schools in a time bound manner and prior to that MCD and the Education Directorate would need to visit every school up to elementary level to determine the extent to which they need to fill the gaps that have been specified under RTE '09. The quick survey results given by MCD are but a starting point, the Committee stated. Again, there has been no follow up, and the process of recognition remains a far cry from these directions.

Planning and Public Investment: The Review Committee (2012) had suggested ways to augment supply of private schools by allowing Section 25 companies to open schools and private schools to run in two shifts, doing away with essentiality certificate from the authorities to open schools. Instead, the market will decide the need for a school. In our view, these market friendly measures, cannot provide a solution to the problems of schooling for the masses, that is the central issue here. Rather, the solution would have

²² A Committee constituted (January 2012) under the State Project Director of UEEM decided that municipal ward should be used as a basic unit for school mapping and all schools including private, recognised, unrecognised, shall be reflected in the Ward Map prepared by the Delhi Geospatial Society Limited (DGSL) and census data and habitation shall be super-imposed on it to identify the locations where neighbourhood schools are not available. (CAG, 2017: p.11)

to be found in expansion of well-functioning public schools in a significant manner (NCERT 2010; De et al, 2002). In the urban context, educational planning needs to focus especially on urban fringes through strategic interventions. State-funded neighbourhood common schools, where thousands of students' study, still hold out hope for ensuring equal opportunities (Menon, 2017). To uphold the RTE norms in these public institutions should be the priority. This is the only sustainable way to deal with the LFPS issue.²³

The lack of school planning is part of the larger neglect and failure of urban planning, particularly affordable housing with civic amenities for all. Civic amenities are not available, which means that informal arrangements become the norm. Urban planning and regularization of localities are central to this issue. Going by the present trend, it seems more likely that the State will continue to neglect the urban margins and allow the unfettered spread of educational markets (Nambissan, 2021).

Another key lacuna, which we have not discussed here, is the complex administrative structures, overlapping jurisdictions, and legal anomalies between the various tiers of government that characterize Delhi's governance (GNCTD, 2006). The elected government of Delhi has no role in determining land use, as it is under the control of the DDA which reports to the Central government. Similarly, the multiple lines of authorities and political rivalry across them, makes implementation of regulations even weaker (Mukhopadhyay et al 2017). The local body administration does not follow directives from the State authorities, whereas the latter would push the onus onto SSA. Just as the administration of public schools by a single authority like the DoE makes sense (NCERT, 2010), regulatory role is best performed by a single body rather than be distributed across several authorities.

National Policy Space: What does the Delhi regulation story mean for the national education policy? There are two things on which regulation stands: (i) defining appropriate norms and (ii) stringent application of the norms through an efficient administrative mechanism/ institution for monitoring. What we observed is a deregulated market with practically zero regulations on the ground. It is not a market which has been shackled by regulation and therefore "over regulated" as some would hold. And yet, market-based reforms has been the favoured reform trajectory, as seen in the New Education policy (2020). The Policy proceeds with the assumption that regulation based on a set of norms as provided in the RTE Act, is too rigid and restrictive. According to the Policy, the prevailing system, that is the RTE has discouraged the so-called "public spirited private/philanthropic agencies". This arrangement is to be replaced by what the NEP calls flexible and self-selective regulatory standards. This will mainly be in the form of public disclosure of "all finances, procedures and educational outcomes". The Policy assumes that parents' choice of schools will itself be a form of regulation, an observation that does not hold even in the developed nations. This is a wholly incorrect assumption for the conditions prevailing in India, as we have seen. Self-regulation through market forces and voluntary choices will be a slippery slope to take. What is needed is better implementation of existing frameworks, which almost never happens.

Politics of Regulation: Regulation is a coercive instrument of the State and therefore it would be unpopular especially among regulatees. "The central political problem of using coercive techniques is maintaining essential political support when detractors are often unified and powerful and supporters are diffused across population (Nakamura and Church, 2003: p.4)." In this case, the private school associations have organised thick and fast, and are pushing for fundamental changes in law. Their demand is that education

²³ Elaborated in Bose et al (forthcoming)

should be recognised as another commercial sector overruling the not for profit tag. The argument is to make reality the law since private schools in essence are commercial and mostly unregulated. As the private sector becomes large this pressure builds on the accumulated neglect of the State.

On the other hand, the beneficiaries of regulation are not only dispersed and unorganised, they also are unaware of the benefits received. Voice, as we know, is deeply embedded in class, caste and other social categories. There are practically no associations of parents from less privileged groups who were found to have mobilised around issues of schooling.

It is not impossible, however, to challenge “mobilisation of bias” It means moving away from the “individual-centric” discourse of school choice to community and political mobilisation that can demand accountability from the system. It means that democratic and political movements have to create a political space where such issues are seriously discussed, debated and acted upon. One principal set of actors should be the political parties representing the marginal voices – dalit, Adivasi, informal workers, minorities and other oppressed groups etc. who must make education a central agenda of their struggle.

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Appendix
Table A1: Recognised Private Schools in Sarpur

Name of the School	Year of Establishment	School Level	Monthly tuition Fees for Class 1	Enrolment	RTE EWS	PTR	SCR	Year and Type of Recognition
RPS_3	2014	1st to 5th	Rs 1000	178	-	36	36	Recognised in 2014 under the RTE Act; MCD Recognised
RPS_4	2014(1998)*	1st to 8th	Rs 1500	800	-	31	80	Recognised in 2014 under the RTE Act; DoE Recognised
RPS_5	2014	1st to 5th	Rs 1900	170	-	18	18	Recognised in 2014 under the RTE Act; MCD Recognised
RPS_6	1992	1st to 8th	Temporarily closed	1080	-	24	-	Recognised in 1998 under DSEA Act by DoE
RPS_7	2014	1st to 5th	Rs 1400	225	3.2	27	17	Recognised in 2014 under the RTE Act; MCD Recognised
RPS_8	1996	Pre School to 8th		879	-	64	83	Recognised in 2003 under DSEA Act by DoE
RPS_9	2004	1st to 8th	Rs 1250	292	-	20	43	Recognised in 2014 under the RTE Act; DoE Recognised

Source: UDISE, 2017-18

PTR: Pupil teacher ratio

SCR: Student classroom ratio

RTE EWS: Percentage of students enrolled under RTE 12(1)(c).

* Figure in bracket indicates when actually established.

Other RTE Compliant Facilities:

Pucca Building – all schools

Separate Toilets – all schools

Drinking water – all Schools

Library - 6/7 schools

Ramp – 2/7 schools

Admissions for EWS – 1/7 schools

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Sukanya Bose, is Assistant Professor, NIPFP
Email: sukanya.bose@nipfp.org.in

Priyanta Ghosh, is Assistant Professor,
Gour Banga University
Email: pgeconomics88@gmail.com

Arvind Sardana, is Member of Social Science
Group, Eklavya
Email: arvindewas@gmail.com

Manohar Boda, is Research Scholar, JNU
Email: manoharboda1402@gmail.com



National Institute of Public Finance and Policy,
18/2, Satsang Vihar Marg, Special Institutional
Area (Near JNU), New Delhi 110067
Tel. No. 26569303, 26569780, 26569784
Fax: 91-11-26852548
www.nipfp.org.in