

# Role of Private Enterprises/entities in Public Education - Sociological Study

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## Abstract

This paper attempts to study how **private entities/enterprises; educational institution** The Supreme Court of India ("SC") recently dealt with the issue of invocation of writ jurisdiction of the High Court against Deemed Universities in the matter of Dr. Janet Jeyapaul v. SRM University & Others. ("SRM Case"). The petitioner (an employee of the SRM University) in the SRM Case had invoked the writ jurisdiction of the High Court of Madras ("HCM") under Article 226 challenging the notice issued by the SRM University terminating her services. The Single Judge of HCM allowed the writ petition by quashing the notice of termination and directing reinstatement of the petitioner. However, order of the Single Judge was set aside by the Division Bench of HCM, without considering merits of the case, holding that the SRM University was neither a State nor an authority within the meaning of Article 12 of the COI. The last decade has seen the mass exit of millions of children from government schools in India, as well as low learning outcomes at the primary level. Private schools now enrol an estimated 35% of students in primary schools in the country. However, despite an increase in the year-on-year government expenditure per student, and regular hikes in private school fees, overall learning outcomes have not improved.

*Key words: governments, education, public, private, institutes*

## Introduction

Randomised evaluations scientifically measure the impact of a programme by dividing a sample of a population randomly into two groups, where, at the start, the characteristics of both groups are the same on average. The only aspect that differs is that one group receives the programme, while the other does not. Researchers track the individuals and after some time outcomes are measured. The differences between the two groups – the impact – can be attributed solely to the programme. A collection of randomised evaluations completed in India over the last 15 years have measured the impact of various aspects on children's education outcomes. The findings of these scientific studies show that such outcomes may not depend so much on whether governments or private managements run a school, or on hard inputs like books, computers and materials, but on appropriately designed soft inputs such as innovation in methods and practices of teaching.

## Objective:

This paper intends to explore and analyze **Education in India** which is primarily provided by public **schools** and **private schools**. Also, various **articles** of the **Indian Constitution**, free and compulsory **education**

## State of government schools

The current K-12 school system in India is one of the largest in the world with more than 1.4 million schools with 250+ million students enrolled. Schools have grown at a CAGR of 2.5% from 1.2 million in 2005 to 1.4 million in 2011 and enrolment has grown at a CAGR of 2.2% to reach 253 million students in 2011. The Indian K-12 system is facing two major challenges- access and quality. While the GER at primary grades has peaked, the dropout ratios in senior classes is still fairly high. There are issues due to lack of proper infrastructure facilities, high pupil-teacher ratio and lack of trained teachers which are impacting the quality of education imparted to students. Low learning level across elementary and secondary has seen an increase in the need for paid supplemental help by students. The contribution of the private sector to increase the standards 25% of all schools in India are private schools accounting for 40% share in enrolment. The number of private schools has grown at of public schools. Contribution to access and quality has resulted in enrolment shift from public to private schools in the recent years. K-12 private schools today operate across a vast range of curriculums and boards. Key indicators that make them preferential today are the process of ongoing and continuous evaluation, comprehensive curriculum and syllabi based on practical applications, assessments based on interactive, skills and fun based learning which has led to better learning levels and quality of school education. Based on current trends, it appears that the private sector may account for a 55-60% share in overall enrolment in K-12 schools by 2022. Our government and regulators need to recognize this reality. Private players are facing challenges in setting up and operating schools.

From a regulatory perspective in particular, schools are allowed to be set up either by the central/ state/ local government or the private sector by establishing a trust/ society. There are strict norms around infrastructure and other facilities, process of application, registration as a society/ trust to obtain the land, establish a school. To be a recognized school today, it has to be regulate and recognize schools with inconsistency in norms across the government, inadequate and delayed compensation from the government for the 25% EWS under RTE are forcing existing and performing private schools to close down. This complex regulatory operational challenges to the private sector, which is detrimental to their existence and contribution to the growing quality. High land costs, unavailability of land, high teacher salaries and 25% reservation for EWS impact the viability of schools. The paper highlights some international case studies of countries where regulations are formed on the basis of outcomes and output rather than input, effective ways of partnership between the public and private sector to enhance quality, public-funded independent schools and examples of schools which are built on short- term lease or rental mode. Across India, between 2010-'11 and 2015-'16, the mass exit from government schools to private schools has been estimated at 1.75 crore new students in private schools and 1.3 crore fewer students enrolled in government schools through [analysis](#) of government District Information System for Education data. A [2011-'12 survey](#) by the National Council for Applied Economic Research estimated that 35% of children at the primary level were enrolled in private schools. The exit from government schools has been at a high cost to

parents, with annual private school fees in metros more than doubling over 10 years as estimated by a [survey](#) by the Associated Chambers of Commerce of India in 2015.

The migration from government to private schools is an underestimate as many children enrolled in government schools (where they will take exams from) also attend unrecognised private schools where they receive teaching. These schools remain unregistered as they cannot meet government conditions (including a playground and qualified teachers paid the salaries of government teachers), and are run on a low budget. The District Information System for Education [flash statistics](#) show over 21,000 unrecognised schools across India in 2013-'14. This large number further underlines parents' low perceptions of the government schools they have exited.

The annual cost of private schools to parents is a large portion of their income. However, this is less than half the picture as the unregulated business of private tuition has expanded for students attending both government and private schools. A [2014 survey](#) by the National Sample Survey Office estimated that 7.1 crore students – one-quarter of all students in India – were taking private tuitions. A 2013 [survey](#) by the Associated Chambers of Commerce of India in metro cities found the growth in private tuitions had doubled over six years, with both rich and poor parents paying for these extra classes.

### **Low learning outcomes**

Across India, annual reports such as the [Annual Status of Education Report](#) by the non-governmental organisation Pratham, and government surveys like [Gunotsav](#), repeatedly show that children in several private and government schools are not learning the basics of language and maths even after four years of schooling. The National Council for Applied Economic Research's 2011-'12 [survey](#) reported a dropout rate of 40% of those who complete Class 5 but do not reach Class 9, with a further 40% of these dropping out before completing Class 9. The migration to private schools has worried governments – closing down government schools is an annual exercise after children exit. Ahmedabad Municipal Corporation closed [25%](#) of schools from 2009-'10 to 2016-'17. The failure of the government education system, combined with financial pressures on parents, seem to have made private schools the enemy for the government and parents, and a target for more regulation and protest.

### **No regulation of tuition centres**

Governments across India, including Delhi, Maharashtra, Rajasthan and Tamil Nadu, have enacted regulatory laws to control private school fees. Gujarat became the first to enact a double regulatory mechanism in April when it capped private school fees and set up Fee Regulatory Committees. Perversely, none of India's states have a regulatory act for private tuition centres, many of whom charge more than Gujarat's cap of Rs 15,000 to Rs 27,000 per year. In Gujarat, the double regulation for private schools may mean a double benefit for private

tuition centres – who now face an influx of teachers to hire whom private schools can no longer afford, and parents with unspent funds who want to boost their children's exam preparation.

Scientific studies provide answers

A scientific lens on the debate tells us that neither the failure of government schools nor the massive expansion of private education may be the driver for the rise in parents opting for private education. Findings of randomised evaluations completed over the last 15 years question the direction of government and parents spending on traditional hard inputs, and offer approaches found effective that focus on the cognitive development of children, and building their non-cognitive skills.

Private management not a silver bullet A 2015 [study](#) involving randomised evaluation in rural Andhra Pradesh found that private schools were more cost-efficient than government schools, but were not more effective at improving learning outcomes in core subjects of maths and Telugu. The four-year study found that teachers of private schools spent more of their time actively teaching and in control of the class. Private schools were found to get more done with less resources. The annual cost per student in government schools was over three times that of the private schools. The study indicated that better management can achieve more of the same with fewer resources, but does not necessarily lead to improved learning outcomes.

### **Teach at the pace of children**

A 2016 [study](#) on multiple randomised evaluations of the Teaching at the Right Level model – a pedagogical approach that involves evaluating children and then grouping them according to learning level rather than age or grade – in Bihar, Gujarat, Maharashtra, Uttarakhand, Haryana and Uttar Pradesh found that Pratham's approach of teaching children at their level of learning significantly improved learning outcomes. The pedagogy innovation addresses the constraint teachers typically face – of classrooms with students with a large range of learning levels, and first-generation learners without support at home to learn basics. These studies, over the years, tested variations in the implementation model to inform how to best embed the innovation in methods and practices of teaching in a large government system. The studies found that teachers need more than materials and a manual to sustain a change in how they teach, and they need to have an administration structure to maintain regular school visits to support teachers to adopt and regularly use a new pedagogy.

When computers introduced better methods and practices of teaching, studies found positive results on learning outcomes. A 2016 [study](#) evaluated Mindspark, a computer-aided learning programme for students in Classes 6 to Class 9 in New Delhi. The Mindspark programme adjusts questions and instructions for the student based on how well they perform in the previous question. The approach of customising instruction to the level of the child, and adapting to the individual learning pace of a child was found to raise learning outcomes, especially among students who had the lowest learning levels.

It was further pointed out that the SRM University is a juristic body engaged in imparting education in higher studies and is conferred with a status of "Deemed University" by the Central Government under Section 3 of the University Grant Commission Act, 1956 ("**UGC Act**") and "*imparting education to students at large*" is a "*public function*" and, therefore, if any authority is found to have been engaged in the activity of imparting education to the students at large then irrespective of the status of any such authority, it should be made amenable to writ jurisdiction of the High Court under Article 226 of the COI.

One of the submissions made on behalf of the SRM University was that if this court holds that the SRM University is amenable to writ jurisdiction then apart from employees even those who are otherwise dealing with the SRM University would start invoking writ jurisdiction which would open the flood gate of litigation in courts.

**Decision of the SC:** The SC held that the division bench of the High Court erred in holding that the SRM University is not subject to writ jurisdiction of the High Court under Article 226 of the COI. While rejecting the view of the Division Bench of HCM, the SC observed that the SRM University is engaged in imparting education in higher studies to students at large and therefore it is discharging "*public function*" by way of imparting education. Further, it is notified as a "Deemed University" by the Central Government under Section 3 of the UGC Act, and being a "Deemed University", all the provisions of the UGC Act are made applicable to the SRM University which, *inter alia*, provides for effective discharge of the public function namely education for the benefit of public. Once the SRM University is declared as "Deemed University" whose all functions and activities are governed by the UGC Act, alike other universities then it is an "*authority*" within the meaning of Article 12 of the COI and once it is held to be an "*authority*" as provided in Article 12 then as a necessary consequence, it becomes amenable to writ jurisdiction of the High Court under Article 226 of the COI.

## Conclusion

K-12 education is highly regulated at Central and state government levels in India. The regulatory framework depends on state. The SC judgment has a far reaching implication for educational institutions as it not only provides an additional remedy against the "Deemed Universities" (and by implication other educational institutions performing public function and public duty) but a substantial one as the High Courts have wide powers under Article 226 of the COI which can now be used frequently by the litigants against such institutions to secure their fundamental rights. Therefore, while on one hand, the SC judgment is being welcomed by students and public at large, the Deemed Universities and other institutions for education are not too pleased. CBSE / ICSE schools are generally granted an exception from from the State Education Department. Inadequate compensation by the government for 25% EWS: Compensation is calculated on a per child cost basis considering only the recurring costs and not capital costs. Schools facing closure: Many affordable private schools are facing closure as they are unable to adhere to RTE norms and scale given the scarcity of land; these

schools had been set up many years ago in small areas where marginalized sections of the society sent their children for schooling. Closure due to non compliance forced many students to quit their schools of choice.

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