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COMMENTS ON THE UTTAR PRADESH SELF-FINANCED INDEPENDENT SCHOOLS (REGULATION OF FEES) BILL, 2017

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I. KEY COMMENTS

The Uttar Pradesh Self-Financed Independent Schools (Regulation of Fees) Bill, 2017 (“Bill”) primarily seeks to address the concerns regarding arbitrariness and lack of accountability in the fees charged by schools. The present note critiques the version of the Bill by suggesting necessary amendments and additions. The analysis is based on the present framework of laws and rules that govern education in India and Uttar Pradesh specifically (**Annexure 1**) and principles enunciated by the Supreme Court through various case-laws (**Annexure 2**). The additions to the Bill have been suggested based on a review of *pari materia* laws on fee regulation across different States in India (**Annexure 3**).

The main comments on the Bill are as follows:

Clause	Proposed amendments
2(c) & (g)- Appropriate Authority/Zonal Fee Regulatory Committee	Clauses 2(c) and (g) connote the same. It is advisable to use a single uniform term for the relevant authority. Clause 2(c) may thus be removed on account of redundancy.
Section 2(e)- District inspector of schools	Consistency between the role of these officers and officers under other statutory enactment such as the Zila Shikshak Authority specified under the Uttar Pradesh Right to Education Rules, 2011 may be emphasized and their roles may be merged/streamlined/aligned as the case may be for stronger enforcement.
2(u)- Self- Financed Independent School	Though the definition of self-financed independent school is concise, it falls short of a comprehensive definition. Apart from the excluded categories of institutions under Clause 2(u), the draft Bill does not define the inclusions in a clear manner. Note, the following categories of schools exist (apart from categories excluded under Section 1(5) of the RTE Act): <ul style="list-style-type: none"> A. Private unaided schools B. Private aided schools C. Religious and Linguistic Minority schools D. Board affiliated schools E. Private unaided schools recognised by local authority F. Private unaided schools which have received land from government G. Pre-primary schools

	<p>While some of the aforesaid categories may squarely fall within the purview of clause 2(u), the status of others (e.g. E, F as above) remain unclear. Necessary clarifications may be issued in order to ascertain the application of the Bill to these institutions.</p>
2(v)- School	<p>Use of terminology “such as” in clause 2(v)(i) is vague as the status of institutions such as crèches remain unclear. Similarly, it is unclear if the clause applies to the age group of 3-6 only or across all institutions dealing with children below the age group of 6.</p> <p>The rationale for excluding pre-primary schools functioning on a stand-alone basis in the proviso remains unclear. It must be noted that the National Commission for Protection of Child Rights (NCPCR) has issued regulatory guidelines for private play schools which provide for regulation of fees regardless of the status of the institution (whether stand alone or part of a formal school).¹ The provision in the present Bill may be reconsidered to ensure consistency with the NCPCR guidelines.</p>
3- Fee and Fund	<p>An express provision restricting fees to be charged both ‘directly’ and ‘indirectly’ may be inserted to prevent any misuse of the Act. While the present version provides indicative fee components, using the word ‘indirect’ charging of fees may cover covert malpractices which may arise in the future in relation to a fee component not covered under the present framework.</p> <p>Other <i>pari materia</i> laws have elaborate annexes on different types of fees which may be regulated. Use of the term ‘indirect’ charging of fees would safeguard parents’ interests as regards other fee categories recognised by legislatures in different states and/or those which may come up in course of the academic cycle, but are not envisioned by the legislature at the moment.</p>
3(C)- Development fund charge	<p>In addition, the clause must clarify that the imposition of a development fund charge remains compliant with the rules of such imposition laid down by the Supreme Court of India in Modern School² & Action Committee of Unaided Private School³ cases.</p> <p>Such Development fund charge is to be capped at 15% of <i>annual tuition fees</i> and the school is obligated to maintain a <i>specified</i></p>

¹National Commission for Protection of Child Rights, Regulatory Guidelines For Private Play Schools, available at: <http://ncpcr.gov.in/showfile.php?lang=1&level=1&&sublinkid=933&lid=1271> (last visited 22.12.2017).

² (2004) 5 SCC 583.

³ (2009) 11 SCALE 77

	<i>earmarked fund. The depreciation reserve fund is to be equivalent to depreciation charged in the accounts.</i> ⁴
3(v)- uploading on websites	<p>There exist no legal obligations on schools to maintain a website. The online disclosure requirements under CBSE affiliation is limited to disclosure to parents. Therefore, since no pre-existing framework for maintaining a website for the public exists for schools, the enforcement of this clause may remain problematic. Necessary safeguards may thus be put in place in this clause to ensure compliance by incentivising schools to publish such information and/or imposing reasonable and commensurate penalty for violation thereof.</p> <p>In addition, the Bill does not provide for communication to parents. Such inclusions may be considered.</p>
4- Annual Fee Fixation	<p>The percentage of fee increase needs to be further rationalised. For instance, increase in monthly salary of teaching staff could correspond to Pay Commission notifications rather than being discretionary.</p> <p>Similarly, there is criticism of the fixation of increase percentage as it may encourage annual increases without the need for justification. Therefore, these percentages must be studied in greater detail.</p>
5- Proposed fee by Management Committee	<p>The language of this provision must be reconsidered for:</p> <ul style="list-style-type: none"> - Drafting errors: The meaning of the provision is not very clear. It may be re-drafted for simplicity and coherence. For instance, “<i>to ensure properly of the school</i>” and “<i>by submitted the proposal</i>” are visible drafting errors. Therefore, on grounds of language and coherence, the sentence must be revised. - The exemption of permitted fee increase must be accompanied by adequate safeguards such as guiding principles and due process.
6- Income and Expenditure	<p>Income must specifically account for reimbursements under Section 12 of the RTE Act.</p> <p>Therefore, Clause 6(iii) must include annual recurring grants or aids from the government for aided schools; grant of land, equipment or other facilities in lieu of provision of free education; as well as reimbursement for per-child expenditure by the government under Section 12(1)(c).</p> <p>Further, the inclusion of voluntary donations must be reconsidered in light of CBSE Affiliation Bye-Laws which place a bar on schools receiving voluntary donations.</p>

⁴ Justice Anil Dev Singh Committee for Review of School Fee, 10th Interim Report, April 25, 2016, available at: http://www.edudel.nic.in/welcome_folder/interim_report_dt_04062013/INTERIMREPORTNO10_dt_10062016.pdf (last visited 22.12.2017)

<p>8- Zonal fee regulatory committee</p>	<ul style="list-style-type: none"> - A provision for emoluments of members of the committee must be inserted. - The Clause 8(viii) is loosely worded as no criteria are set to justify the need for the increase of fees. We believe that such loosely worded clauses are prone to be misused and hence the government must work on defining indicative criteria which justify fee increase. - Under Clause 8(x), due inquiry may not be sufficient and the law must demand following of due process requirements (a definitive legal threshold) as the committee has been vested with wide powers and civil courts have been ousted of their jurisdiction. - The penalty provision under Clause 8(x) may be reconsidered especially in relation to Clause 8(x)(iii) dealing with the withdrawal of recognition/affiliation. Withdrawal of recognition may bear direct implications on children, their parents and the future of pupils at large. Hence, this provision may be reconsidered in the present Bill. The Rajasthan Act is a good example as it has punitive financial implications for schools in case of contravention but does not endorse withdrawal of recognition.
<p>9- State Appellate Authority</p>	<p>Clause 9 must be reworded to provide for composition and functioning of State Appellate Authority.</p> <p>Currently, Clause 9 only provides for an interim solution. The same may be separately notified and need not be included in the parent Act. It is imperative instead to elaborate on the structure, functions, power and role of the State Appellate Authority for the purposes of this Bill.</p> <p>In addition, the possibility of a Judicial Member in the Appellate Authority needs to be considered in light of Section 13.</p>
<p>10- Maintenance of accounts</p>	<p>It is vital to note that the Ministry for Human Resource and Development ('MHRD') in consultation with the Institute of Chartered Accountants of India ('ICAI') has evolved accounting standards applicable for school. The same may be considered for the purposes of the present Act.⁵</p>
<p>13- Jurisdiction of civil courts barred</p>	<p>Section 13 is susceptible to challenge in the absence of a judicial member in the Appellate Authority.</p> <p>The manner in which Section 13 is phrased has the effect of ousting the jurisdiction of courts. This clause has limited application as the complete exclusion of courts is contrary to the existing legal framework in India. This can be seen in the case of <i>L. C. Chandrakumar v. U.O.I</i> 1997 (2) SCR 1186, where the Supreme Court held that the jurisdiction bestowed upon the High Courts under Articles 226/227 and upon the Supreme Court under</p>

⁵ ICAI and MHRD's Guiding Note on Accounting by Schools, July 21, 2005 (New Delhi)
<http://www.caalley.com/gn/23627research5.pdf>

	<p>article 32 of the Constitution is part of the unchallengeable basic structure of our Constitution. The power of courts thus continues to operate notwithstanding exclusionary clauses in the nature of present Bill.</p> <p>Illustratively, all decisions of the Administrative Tribunals are subject to analysis before a Division Bench of the High Court within whose jurisdiction the Tribunal concerned falls. Similarly, with the example of the National Green Tribunal, Section 29 of the NGT Act, states that “<i>No Civil Court will have the jurisdiction to entertain any appeal with respect to a matter that falls under the appellate jurisdiction of this tribunal.</i>” This provision has been read down by the Madras High Court keeping in mind the position of law in the L.C. Chandra Kumar case.</p> <p>If the law has an exclusionary clause that restricts or bars the role of the Civil Judiciary, there must be exceptions accounted for in the clause or provision. This is best depicted by Section 37 of the Arbitration and Conciliation Act, 1996 which lists out the various “Appealable orders” of arbitral tribunals.</p> <p>It is recommended that Clause 13 is revised to ensure that its wording is in compliance with the position of law emanating from the Supreme Court.</p>
15- Power to Amend	The power to amend under Section 15 is excessive. Rule-making power may be exercised by the government. However, modification, addition or deletion of the provisions is an excessive delegation.
17- Exemptions	The present clause is too loosely worded and susceptible to misuse. Instead, the exemption clause may list particular categories of schools to prevent future misuse.

II. PROPOSED ADDITIONS

Preamble	<ul style="list-style-type: none"> • A preamble demonstrating the need for such legislation as well as the intent of the government, i.e. to combat commercialisation, profiteering etc. may be set out in the present Bill.
Zonal Fee Regulatory Committee	<ul style="list-style-type: none"> • Presence of a judicial member (for example a High Court Judge) as a part of the Zonal Fee Regulatory Committee ('ZFRC') is suggested (e.g. presence of a retired high court judge). Presence of a judicial mind is all the more important because the committee has been vested with powers akin to a civil court. • Detailed rules for emoluments of such members must be made pursuant to the Act to ensure that members and the Chairman have incentive to function properly. • An explicit provision may be inserted to effectuate coordination between ZFRC and affiliated boards such as CBSE to ensure execution of ZFRC's decisions.
School level fee committee	<ul style="list-style-type: none"> • Constitution of a school-level fee committee may be an advisable model at the level of schools, which could then report to ZFRC. This could be constituted by parents who have shown willingness and have been chosen by a lottery system to ensure transparency. • Details regarding the meeting of parent teacher association/School Management Committees ('SMC') type bodies may be set out in the Act to ensure that such bodies actually meet & govern decision making.
Penalty provisions	<ul style="list-style-type: none"> • Withdrawal of recognition may bear direct implications on children, their parents and future of pupils at large. Hence, this provision may be reconsidered in the present Bill. The Rajasthan Act is indicative as it has punitive financial implications for schools in case of contravention but does not endorse withdrawal of recognition.

III. BACKGROUND

The right to free and compulsory education is recognised under the Indian Constitution in Article 21A for children between the ages of six to fourteen. This creates a duty on the State to provide free and compulsory education in a neighbourhood school. However, parents have the right to opt for a school other than one controlled and managed by the State, under the International Covenant on Economic and Social Rights. Therefore, the State may need to regulate private schools as they are performing a public function. This further needs to be balanced with the right to freedom of trade or occupation held by private schools as well as the right of minority communities to establish and maintain educational institutions.

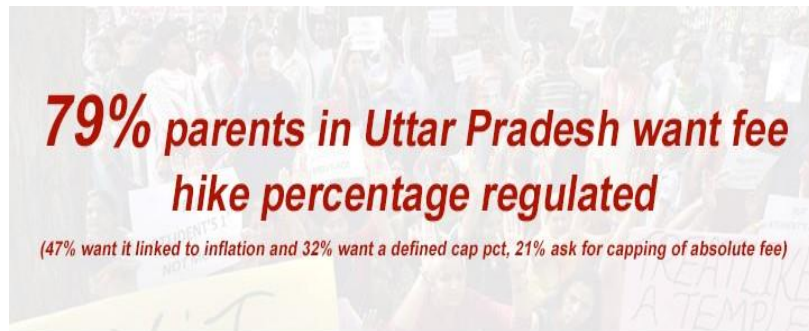
In consideration of the aforesaid constitutional obligations as well as regulatory frameworks such as the *World Bank's Systems Approach for Better Education Results – Engaging the Private Sector [SABERS-EPS] Framework*,⁶ Vidhi has previously published a [Report](#) that identifies criteria for measuring efficient private school regulation in India.⁷ The criteria include - ease of opening schools, operational autonomy (including the autonomy to fix fees), transparency and accountability as well as empowering parents and communities. In applying these metrics to fee regulation, the law must balance the need to ensure parent and community empowerment as well as transparency with the need to maintain operational autonomy. This remains a critical element and the present Bill has been analysed using the same lens.

In Uttar Pradesh, the need to regulate school fee accentuated due to the large number of students studying in private schools. Unified District Information System for Education ('UDISE') data indicates that the total enrolment in private schools was more than 50% of the

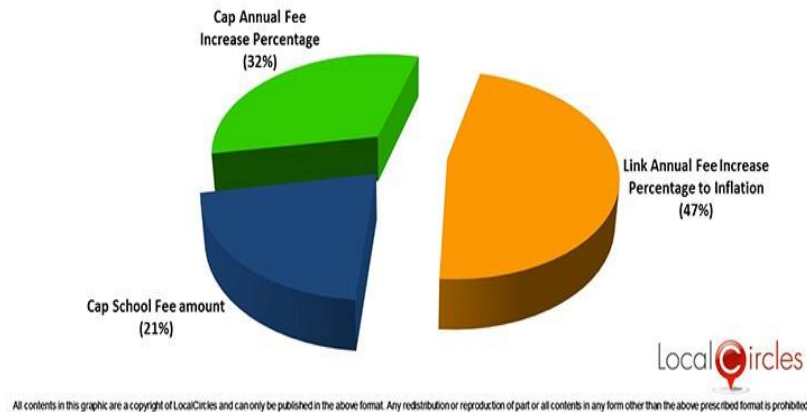
⁶ What Matters Most for Engaging the Private sector in Education: A Framework Paper (World Bank, 2014) available at: http://wbgfiles.worldbank.org/documents/hdn/ed/saber/supporting_doc/Background/EPS/SABER_Engaging_the_Private_Sector_in_Education_What_Matters_Framework_Paper.pdf (last visited 22.12.2017)

⁷ Shruti Ambasth et al, [Regulation of private schools in India, May 2017 at: https://static1.squarespace.com/static/551ea026e4b0adba21a8f9df/t/59072cb95016e1dcad96714d/1493642441404/Report+on+Regulation+of+Private+Schools_Final.pdf](https://static1.squarespace.com/static/551ea026e4b0adba21a8f9df/t/59072cb95016e1dcad96714d/1493642441404/Report+on+Regulation+of+Private+Schools_Final.pdf) (last visited 21.12.2017)

total enrolment as it stood in 2015-16.⁸ This amounts to over 1 crore children. Therefore, the size of the sector naturally raises calls for regulation. A recent survey of parents in Uttar Pradesh projects particular interest in regulating ‘fee hike percentage’ or the percentage increase in fees annually. This is illustrated as follows:



What do you believe is the best model to regulate school fee increases in Uttar Pradesh?



Source: Local Circles, April 2017⁹

Parents have continued to express concerns after the release of the present Bill. Concerns rose in relation to the need for audit of schools, representation of parents, safeguards against mid-term expulsion, exemption provisions etc.

⁸ UDISE, Elementary Education State Report Cards (2015-16), available at http://udise.in/Downloads/Elementary-STRC-2015-16/Elementary-State_Report_Cards_2015-16.pdf (last visited 21.12.2017)

⁹ Available at <https://www.localcircles.com/a/press/page/regulating-school-fee#.WjIMwqWbIU> (last visited 21.12.2017)

IV. ANNEXURES

Annexure 1: Framework of Laws in Relation to Fee Regulation

The table below sets out the framework of laws that applies to institutions preceding the commencement of the present Bill. It is vital to take note of these for purposes of ensuring consistency between their provisions and those of the Bill under consideration.

<p>The Right of Children to Free and Compulsory Education Act, 2009 (“RTE Act”)</p>	<p>It regulates the right of children to free and compulsory education between the ages of six to fourteen. In furtherance of this right, the Act regulates various aspects of schools in order to make this right meaningful. It also regulates aided and unaided private schools which are not owned or controlled by the appropriate government or local authority. The following aspects of the RTE Act directly govern private schools and remain significant in informing the drafting of the current Bill:</p> <p><i>Section 2(b): “capitation fee” means any kind of donation or contribution or payment or contribution or payment other than the fee notified by the school;</i></p> <p><i>Section 2 (g): “guardian”, in relation to a child, means a person having the care and custody of that child and includes a natural guardian or guardian appointed or declared by a court or a statute;</i></p> <p><i>Section 2(k): “parent” means either the natural or step or adoptive father or mother of a child;</i></p> <p><i>Section 2(n): “School” means any recognised school imparting elementary education and includes—</i></p> <p><i>(i) a school established, owned or controlled by the appropriate Government or a local authority;</i></p> <p><i>(ii) an aided school receiving aid or grants to meet whole or part of its expenses from the appropriate Government or the local authority;</i></p> <p><i>(iii) a school belonging to specified category; and</i></p> <p><i>(iv) an unaided school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority.</i></p> <p>Section 12: Free and Compulsory Education Obligation</p> <p>Section 12 requires aided and unaided private schools to provide free education to a certain extent. Accordingly, these categories of school have three kinds of income assistance from the Government:</p> <ul style="list-style-type: none">- Unaided schools reserve 25% of their seats for the provision of free education. They receive reimbursement on a per-child expenditure basis from the government.- Aided schools receive annual recurring grants and no additional reimbursement. (The extent of seats reserved is commensurate to the amount of annual recurring grants expressed as a proportion of the total annual recurring expenditure.)
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	<ul style="list-style-type: none"> - Schools may receive land, equipment or other facilities from the government. In turn, they are required to provide free education to an extent. <p>Section 13: Capitation Fee Schools are not allowed to charge capitation fee. Contravention of this provision may attract a fine of up to ten times the capitation fee charged.</p> <p>Section 24: School Management Committee This provides for government schools and aided schools to appoint a management committee with representatives from local authorities, teachers etc, provided that up to three-fourth of the members are parents. This body performs functions related to monitoring and accountability including the preparation of a School Development Plan.</p>
<p>The Uttar Pradesh Right of Children to Free and Compulsory Education Rules, 2011</p>	<p>These Rules are significant due to the role provided to the Zila Shiksha Adhikari as well as the elaborate process for composition of the School Management Committee. The Zila Shiksha Adhikari is responsible for ensuring compliance for reimbursement under Section 12(1)(c) of the Act as well as compliance with the Schedule of Norms and Standards under the RTE Act. This authority is instrumental in granting or withdrawing recognition from schools and can perform certain fee regulation functions related to auditing in the present Bill.</p>
<p>Affiliation laws</p>	<p>While there is no requirement for a school to be affiliated to a Board under the RTE, schools may be further subject to affiliation bye-laws for fee regulation where they have sought such affiliation. For instance, the CBSE Affiliation Bye-Laws under Rule 11 provide for transparency and accountability in fees charged. Specifically, this provision requires fees to be proportionate to the facilities provided, along with a bar on capitation fee and voluntary donations for any purpose. Further, the school may not revise fees mid-term and increases in fees must involve consultation with parent representatives.</p>

Annexure 2: Key Principles for Fee Regulation

This section presents a broad summary of case laws enunciated by the Supreme Court of India and other courts on fee regulation. Note that these decisions have paved a path for achieving a balance between the need to curb malpractices in education through regulatory tools and ensuring that such regulation does not become an over-reach to curb institutional autonomy. The following discussion enunciates key principles to be kept in mind while designing any regulatory structure for fees.

- In *T.M.A. Pai Foundation and Ors. v. State of Karnataka and Ors* (Paras 57, 69),¹⁰ on the question of the extent to which the state can regulate unaided private institutions, the Supreme Court said that the state can devise appropriate machinery only to ensure that institutions do not charge capitation fee or profiteer. It further stated that private institutions had the autonomy to set a fee structure based on the need to raise funds for the betterment and growth of the institutions. In essence, the following principles were laid down: (a) the fixing of a rigid fee structure by the state would be considered an unacceptable restriction on the autonomy of a private educational institution, and (b) a private educational institution is permitted to make a reasonable surplus for the ‘furtherance of education’, as long as it does not amount to profiteering and no capitation fee is charged. Thus, private schools can make profits, as long as they do not amount to *profiteering*. However, the exact parameters of what constitutes ‘reasonable surplus’ and ‘profiteering’ have not been clarified.
- In *Islamic Academy of Education and Anr. v. State of Karnataka and ors*,¹¹ it was held by the majority that each institute must have the freedom to fix its own fee structure taking into consideration the need to generate funds to run the institute and to provide facilities necessary for the students. The Court went on to propose that State Governments should set up a committee headed by a retired judge which would ascertain whether or not fees charged by private schools were justified, and that the institution was not profiteering or charging capitation fees. Then it would either

¹⁰ (2002) 8 SCC 481

¹¹(2003) 6 SCC 697

approve the fee, or propose an alternative fee. The fee fixed by the committee would be binding for three years.¹²

- Though the judgment in *P.A. Inamdar v. State of Maharashtra & Ors.*¹³ sought to review the one in *Islamic Academy* case, it left the mechanism of having the committees undisturbed. In paragraph-129 of the judgment, the Apex Court observed that the State regulation, though minimal, should be to maintain fairness in admission procedure and to check exploitation by charging exorbitant money or capitation fees. In paragraph-140 of the judgment, the Apex Court held that the charge of capitation fee by unaided minority and non-minority institutions for professional courses is just not permissible. Similarly, profiteering is also not permissible. The Apex Court observed that it cannot shut its eyes to the hard realities of commercialisation of education and evil practices being adopted by many institutions to earn large amounts for their private or selfish ends. With respect to Government regulation in the case of private institutions, the Apex Court clearly answered in paragraph-141 that every institution is free to devise its own fee structure, but the same can be regulated in the interest of preventing profiteering. No capitation fee can be charged. In paragraph-145 of the judgment, the Apex Court rejected the suggestion for post-audit or checks if the institutions adopt their own admission procedure and fee structure, since the Apex Court was of the view that admission procedure and fixation of fees should be regulated and controlled at the initial stage itself.

It was clarified that the legal provisions made by the State Legislatures or the scheme evolved by the Court for monitoring admission procedure and fee fixation do not violate the right of minorities under Article 30(1) or the right of minorities and non-minorities under Article 19(1)(g). They are reasonable restrictions in the interest of minority institutions permissible under Article 30(1) and in the interest of general public under Article 19(6) of the Constitution. In paragraph-146, the Apex Court further observed that even non-minority institutions can be subjected to similar restrictions which are found reasonable and in the interest of the student community.

¹² The committee structure to regulate fees was to operate until the Government/Appropriate Authorities consider framing of appropriate regulations. The direction to set up Committee in the States was passed under Article 142 of the Constitution and was to remain in force till appropriate legislation.

¹³ (2005) 6 SCC 537

- In *Modern School v. Union of India*,¹⁴ the Court opined that the interpretation it placed on the provisions of the Delhi School Education Act, 1973 was only to bring in transparency, accountability, expenditure management and utilisation of savings for capital expenditure/investment without infringement of the autonomy of the institute in the matter of fee fixation. It was also to prevent commercialisation of education to the extent possible. The Court further ruled that unaided private schools under the Delhi School Education Act must adopt principles of accounting applicable to non-profit organisations.
- It is material to note that this view was subsequently sought to be challenged and reviewed, but the Apex Court declined to review it, as can be seen in *Unaided Private Schools of Delhi v. Director of Education*.¹⁵

¹⁴2004 (5) SCC 583

¹⁵2009 (10) SCC 1

Annexure 3: Overview of *pari materia* legislations on fee regulation across States & proposed additions to the Bill

A critical analysis of *pari materia* enactments of fee fixation/regulation prevalent in other States was conducted. While some States have criteria to guide the fixation of fees by the statutory committee, other States including this Bill only seek to regulate fees by putting in place safeguards to prevent profiteering. Based on the analysis, a few vital provisions which may supplement the current form of the bill were sieved. The table below highlights those provisions (as existing in other States) which may be added to the present Bill. Note that the table below looks into enactments dealing with both fee fixation as well as fee regulation.

Tamil Nadu	<i>The Tamil Nadu Schools (Regulation of Collection of Fee) Act, 2009</i> ¹⁶	<ul style="list-style-type: none"> • Presence of a judicial member as a part of the Zonal Fee Regulatory Committee ('ZFRC') is suggested (e.g. presence of a retired high court judge). Presence of a judicial mind is all the more important because the committee has been vested with powers akin to a civil court. • Detailed rules for emoluments of such members must be made pursuant to the Act to ensure that members and chairman are incentivised to function properly. • An explicit provision may be inserted to effectuate coordination between the ZFRC and affiliated boards such as CBSE to ensure execution of the ZFRC's decisions.
Rajasthan	<i>Rajasthan Schools (Regulation of Fee) Act, 2016 and Rules 2017</i>	<ul style="list-style-type: none"> • Constitution of a school-level fee committee may be an advisable model at the level of schools, which could then report to the ZFRC. This would be constituted by parents who

¹⁶ The overall Act was challenged in *Tamil Nadu Nursery Matriculation and Higher Secondary Schools Association (Regd.) rep. by its General Secretary Mr. K.R. Nandakumar v. The State of Tamil Nadu rep. by the Principal Secretary, Department of School Education and Ors. & allied petitions* (09.04.2010 - MADHC). The constitutional validity of the overall Act was upheld and only Section 11 of the Act which gave search and seizure power to the committee to enter and inspect school premises was struck down as arbitrary.

In another instance, some CBSE and ICSE schools approached the Supreme Court questioning the powers of the Fee Fixation Committee, leading to the issue of an interim order by the Supreme Court in January 2016. The order said that the power of the committee is limited only to verifying the fee collected by schools and checking if it is commensurate with the facilities provided; they could not impose any fee ceiling (*Asso. Of Management of Pvt. Schools (cbse) & Anr. v. State Of Tamil Nadu & Ors.*, Special leave to appeal C no. 16/2013, 28.01.2016 - SC Order).

		<p>have shown willingness and have been chosen by a lottery system to ensure transparency.</p> <ul style="list-style-type: none"> • Withdrawal of recognition may bear direct implications on children, their parents and the future of pupils at large. Hence, this provision may be reconsidered in the present Bill. The Rajasthan Act is indicative as it has punitive financial implications for schools in the case of contravention but does not endorse withdrawal of recognition.
Maharashtra	<i>Maharashtra Educational Institutions (Regulation of Fee) Act, 2011</i>	<ul style="list-style-type: none"> • A preamble demonstrating the need for such legislation as well as intent of the government, i.e. to combat commercialisation, profiteering etc. may be set out in the present Bill. • In defining pre-primary schools, the age group (3-6) may be specified, so as to clarify the inclusion status of crèches and other similar institutions. • Details on the meeting of parent teacher association/School Management Committees ('SMC') type bodies may be set out in the Act to ensure that such bodies actually meet and govern decision making. • On the penalty provisions, the present Bill may look into the aspect of liability for both- individuals as well as the institution to ensure more deterrence. Individual deterrence could be more effective than the withdrawal of recognition as the latter may have a graver impact on public interest.
Punjab	<i>The Punjab Regulation of Fee of Un-aided Educational Institutions Bill, 2016</i>	<ul style="list-style-type: none"> • In case the government wishes to provide a ceiling/cap on the increase of fees, the Punjab legislation may become indicative. The Punjab enactment states that increase in fee shall not exceed eight per cent of the fee of the previous year, charged by the Unaided Educational Institution.
Gujarat	<i>Gujarat Self Financed Schools (Regulation Of Fees) Act, 2017</i>	<ul style="list-style-type: none"> • Similar to the Tamil Nadu Act, the Gujarat Act succinctly mentions as follows: <i>The honorarium and other allowances payable and facilities to be provided to the Chairperson and Members other than the ex-officio members of the Fee Regulatory</i>

		<p><i>Committees and Fee Revision Committee shall be such as may be fixed and specified by the State Government by a general or special order issued in that behalf from time to time.</i></p> <p>A similar provision must be inserted in the present Bill to ensure smooth functioning of the ZFRC.</p> <ul style="list-style-type: none"> • There is an explicit clause entailing exemptions under the Act. The exemptions include- pre-primary classes/play school/crèches not attached to the school. Interestingly, another exemption is of the following nature: <i>The Fee Regulatory Committee may exempt such self financed school from determination of fee that charges the amount of fee lower than the fee prescribed by the State Government by notification in the Official Gazette. Such self financed school shall file an affidavit to that effect in FORM IV. (2) If in the opinion of the Fee Regulatory Committee any self financed school charging amount of fee lower than the fee prescribed by the State Government by notification in Official Gazette, has increased the fee unreasonably, then, it shall be competent to call for such school's records for fee regulation.</i> <p>Such fee has been specified to be Rs. 15000 per annum in case of pre-primary and primary; Rs. 25000 per annum for secondary and higher secondary (general stream) and Rs. 27000 per annum for secondary and higher secondary (science stream).</p> <ul style="list-style-type: none"> • For the present Bill, such an exemption may be considered specially to draw distinctions among different grades of schools and allay concerns of some schools which claim to charge lower fees and believe that regulation may hamper their innovation and functioning. However, safeguards must be ensured through monitoring and other disclosure requirements imposed on such schools, even if the financial regulation aspects of the bill do not apply to them.
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