

SUMMARY NOTE

Roundtable on the Regulation of Non-State Actors in India's School Education

30 Nov 2022

DISCUSSANTS

- Anurag Kundu (Delhi Commission For Protection of Child Rights)
- Deepak Sanan (Centre for Policy Research & Former IAS Officer)
- Dr. Dhvani Mehta (Vidhi Centre for Legal Policy)
- Dr. Govinda Rangachar (Council for Social Development & Former IAS Officer)
- Dr. K. P. Krishnan (Centre for Policy Research & Former IAS Officer)
- Dr. Mekhala Krishnamurty (Centre for Policy Research & Ashoka University)
- Nisha Vernekar (Vidhi Centre for Legal Policy)
- Rashmi Sharma (ICRIER & Former IAS Officer)

MODERATORS

- Avani Kapur (Centre for Policy Research)
- Kiran Bhatta (Centre for Policy Research)
- Mridusmita Bordoloi (Centre for Policy Research)



About the Roundtable Session

With rising demand for education during the last few decades from all sections of the society, there has been an increase in non-state participation in provisioning of schools, as well as, in supplementary services across India.

While there are certain state-level regulations and policies, India lacks an overarching structure and framework for the regulation of private actors. Further, monitoring of compliance of government rules & regulations by the non-state actors- both private school providers and providers of supplementary services – has been an area that has received much less attention from government and other stakeholders than it warrants.

With this background, the Centre for Policy Research (CPR) recently came out with a paper titled “Regulation of Non-State Actors in School Education in India”, which has contributed to the 2022 Global Education Monitoring (GEM) South Asia report on non-state actors in education. It reviewed the existing structure and rules related to regulation of non-state provisioning and explored factors such as lack of state capacity and political inclination that play a major role in explaining inadequate regulation and monitoring.

However, more discussions are required in order to develop better policy interventions towards creating an efficient system for regulation of non-state actors. This has acquired greater urgency in light of the National Education Policy (NEP) 2020’s proposed regulatory framework as part of its recommendations.

Key Highlights

Ms. Mridusmita Bordoloi, one of the co-authors of the background paper, presented some of the key highlights from the research and left the discussants with some key questions. She pointed out that at present fragmented and rudimentary sets of rules around regulation, varying across states, are in place, without an overarching framework for defining what regulation means, why it is important or how it needs to be done.

There is a need for developing an accountability matrix, where each goal and its delivery is mapped out to specific agents within the system who can be held accountable.

Even though NEP 2020 calls for public disclosure of all regulatory information for public oversight and accountability. In reality, this is considerably lacking, further highlighting that **state structures are not adequately oriented towards regulating and monitoring non-state provision**. With this background, Ms. Bordoloi emphasised on some persistent policy dilemmas about regulation in the education sector:

- What are the larger or first principles on which a regulatory system for education needs to be built?
- What are the state capacity constraints that need addressing in order to have a robust regulatory system built on first principles?
- How are the key principles for the State School Standards Authorities (SSSAs), as envisaged by NEP (i.e., independence, flexibility and state-specificity), addressing the challenges faced in regulating non-state provisioning of education?
- Who would SSSAs be accountable to? What would be the mechanism(s) to address grievances and provide feed-back on the SSSA's regulatory feedback?
- What does it mean to have equal or same standards for regulating government and private providers?

Before opening up the roundtable to the discussants, Ms. Kiran Bhatta, as the moderator, emphasised that the term “non-state provisioning” casts a wide net, including everything from small, grassroots agencies to the larger corporate, private entities, and thus can not be homogenised. It is also important to be cognizant of the difference between an entry-exit form of regulation and concurrent form of monitoring, even though both the terms are often used interchangeably.

Understanding State Intervention

While talking about state intervention or regulation, Dr. K. P. Krishnan reminds that ordinarily there are only four reasons for state intervention, namely: allocational efficiency, information asymmetry, externalities, and public goods. And even in these limited situations, the State can conceptually intervene in three forms: taxation, public expenditure, and regulation. **Regulation here refers to interventions to secure modified behaviour.** A dominant reason for regulation is information asymmetry.

Dr. Dhvani Mehta said that while thinking about regulation it is important to think about the extent to which the existing implementing actors need to be accounted for? Dr. Mekhala Krishnamurthy added that the single best regulator of the private sector is a good public sector. Mr. Deepak Sanan concurred stating that the public sector needs to set the benchmark for non-state actors.

Education as Sector

It is important to reinstate that **education is not a public good**, as it is both rival and excludable, reminds Dr. Krishnan. Though this does not mean that the State does not need to provide it to the public. In fact, **school education is a classic merit good with high externalities**, making an excellent case for state intervention.

Dr. Krishnamurthy commented that there is always going to be a commodified part in the education sector, the question one needs to be concerned about is the substance of education. She also highlighted that education is neither a service nor charity, given its externalities. Moreover, viewing from a public system and non-goods perspective, it is not a regulatory intervention which one is talking about but a massive social intervention.

Highlighting the information asymmetry in the sector, Ms. Bhatti pointed out that the impact of non-state in policy agenda setting is disproportionate. And even though the State should be setting the benchmark, increasingly the non-state is doing so based on their priorities, reinstating the importance of looking critically at the non-state education provisioning, she added.



Present Regulatory Framework

There is a lack of clarity of objective in India's current education regulatory framework, which emanates from lack of clarity of problem statement, said Dr. Krishnan. It is also important to remember that regulation can only deal with allocational efficiency. Ms. Rashmi Sharma added that such knowledge of the education sector is often lacking at the levels of State Councils of Educational Research & Training (SCERTs), which leads to regulatory challenges.

Dr. Krishnamurthy highlighted that a lot of **monitoring is done as part of provision, and not regulation in India**. Dr. Govinda Rangachar further commented that the government body regulating the non-state education sector has **"a problem of moral authority and legitimacy"** as a fellow provider-producer who underperforms, yet insists on supervising. Ms. Sharma added that it is necessary to analyse the regulatory norms in Indian states deeply.

Dr. Rangachar also pointed out that one needs to look critically into the newfound emphasis on 'regulation' in the past decade, not only in India but across the globe. The current emphasis on regulatory frameworks stems from OECD's New Regulatory Framework which emphasised upon localisation of management of schools, autonomy and accountability. Therefore, **some scepticism about the regulatory moment may be warranted, as Indian schools are still not ready for self-management**, according to Dr. Rangachar. Mr. Anurag Kundu added that the current frameworks are good at producing compliances in text, without following the spirit of regulation.

Statutory and Regulatory Bodies

Dr. Mehta raised the important question about how one can legislate a completely independent statutory body who works at an arm's length, when it is tied to the government by an umbilical cord. **What does 'being independent' mean in the case of statutory bodies; does it only concern the terms of work and condition of such bodies or does it include a certain exclusiveness in terms of its composition? From a legal and regulatory perspective, there is also lack of clarity about what accounts as a grievance and at what level should it be addressed**, she added.

Talking about SSSAs, Ms. Nisha Vernekar said the **aims of such a body need to be made much more clear**, specifically to avoid confrontation with the State's role as a regulator and to the public school system. Moreover, if SSSAs are to be implemented as the decentralising workforce as envisioned in the NEP, a massive capacity constraint needs to be addressed at priority, she added. Mr. Kundu commented that three things to be made a note of while talking about robustness of such a body, namely: budgeting, routing of budget through appropriate government body, and staffing control.

Mr. Sanan agreed that India suffers from **low state capacity** in both regulatory mechanisms and monitoring systems. He added that while talking about education regulation, there is a need to limit the domain of the desired regulatory body to education itself, rather than overburdening it with regulation which can be done by allied bodies, as in case of school building and provisioning of meals.

Challenges Ahead

Dr. Rangachar noted that many statutory bodies have been created in the past, but a significant number of them are not independent in their functioning in the true essence. In such a case, there is a need for new strategies and ideas for regulation and monitoring. **There is a need for decentralised, independent bodies which understand the local ethos in which Indian schools operate.**

Ms. Sharma added that it is pertinent to ask “what is good education” from both the perspective of provision and regulation. On another note, **regulation against rent-seeking behaviour** is also of paramount importance, she said.

Ms. Bhatta pointed out that the **de-professionalisation of teaching staff is another issue** which has had a huge impact on the provisioning by the sector. Dr. Krishnamurthy also agreed stating that professionalisation holds great importance in improving the quality of education.

Dr. Krishnamurthy raised an important question asking how one can create space for other kinds of institutionalised forms of regulation which are not necessarily legal or implemented by the State? Ms. Vernekar added that in order for a **regulatory body like SSSA to be serviceable, the policy needs to be more prescriptive, than its present iteration.** Mr. Kundu also ended with a pointed question one needs to keep in consideration, “how do we safeguard the robustness of regulation from the regulator?”.

