Recognition and Compliance Challenges for Private Unaided Schools Under Sections 18 And 19 of the Right to Education Act, 2009

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ABSTRACT

The Right to Education Act, 2009 is a cornerstone of India's educational policy, mandating free and compulsory education for children aged 6-14 years. However, Sections 18 and 19 of the Act, alongside state-specific regulations such as Rule 11/12, present significant challenges for private unaided schools in securing recognition and maintaining compliance. These provisions aim to standardize education quality but often impose disproportionate financial and operational burdens, particularly for low-fee schools catering to marginalized communities. This paper examines the recognition and compliance challenges faced by these schools, focusing on land and infrastructure norms, teacher qualifications, and the impact of state-specific rules. It explores the benefits of unrecognized schools, such as better student-teacher ratios and affordability, but also highlights their struggles with infrastructure, teacher salaries, and safety standards. The paper advocates for a balanced regulatory approach, recommending flexible land norms, outcome-based accountability, and public-private partnerships to support unrecognized schools. This approach would enable these institutions to meet the RTE standards gradually, ensuring equitable access to quality education for all children in India.

Keywords: Private unaided schools, recognition challenges, compliance, education policy, public-private partnership, outcome-based accountability.

INTRODUCTION

The Right to Education Act, 2009 ("RTE Act") was enacted to provide free and compulsory education to children aged 6-14 years in India. Sections 18 and 19 of the Act, along with state-specific regulations such as Rule 11/12, have significant implications for the recognition and operational compliance of private unaided schools. These provisions, while intended to standardize education quality, often impose considerable regulatory hurdles, particularly regarding land and establishment norms. This paper explores the challenges faced by private

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unaided schools in obtaining recognition and maintaining compliance under these legal requirements.

SECTIONS 18 AND 19: LEGAL PROVISIONS AND THEIR INTENT

Section 18 of the RTE Act mandates that no school can operate without a certificate of recognition from the appropriate authority. Schools must comply with the Act's prescribed standards and norms to obtain recognition. Section 19 further requires adherence to infrastructure and teacher norms, with non-compliance within three years of enactment leading to de-recognition. While these provisions aim to ensure minimum quality standards, their uniform application has created compliance challenges, especially for private unaided schools with limited resources. Recognition plays a crucial role in improving educational outcomes and safeguarding children's rights in India. However, unrecognised schools continue to meet educational needs despite facing certain limitations. This paper examines the benefits of school recognition, the strengths of unrecognised schools, and the challenges they encounter.

Recognised schools are accounted for in official education surveys like the All India Education Survey and the District Information System for Education ("DISE"). Unrecognised schools are excluded, leading to incomplete data that affects policy decisions. Recognition also enables schools to issue transfer certificates, crucial for students transitioning between institutions. Many parents avoid enrolling their children in unrecognised schools due to the lack of valid transfer certificates, which can disrupt educational progress. Some unrecognised schools address this through unofficial tie-ups with recognised institutions, but these often involve additional costs, burdening parents. Compliance with recognition standards ensures student safety by mandating fire, health, and building regulations. Unrecognised schools that fail to meet these standards pose safety risks. Furthermore, recognised schools adhere to quality benchmarks, ensuring minimum teaching standards. Recognition also curbs misinformation, as unrecognised schools often falsely claim compliance with RTE norms. Formal recognition allows authorities to monitor schools, ensuring transparency and accountability[239].

Integrating unrecognised schools into the formal system can aid universal elementary education. Senior Advocate Kapil Sibal, at the Hon'ble Supreme Court of India stressed

[239] P. S. Aithal & Shubhrajyotsna Aithal, *Analysis of the Indian National Education Policy 2020 Towards Achieving Its Objectives*, 5 INT'L J. MGMT. TECH. & SOC. SCI. 19, 19-35 (2020).

allowing time for RTE compliance rather than shutting them down. These schools offer advantages like better student-teacher ratios, often meeting the RTE standard of 30:1, ensuring personalized attention. Teacher accountability is stronger due to direct supervision and parent involvement. Community-driven motivations prioritize quality over profit, enhancing performance. Competition fosters innovation, improving facilities, teachers, and learning outcomes. Instead of penalizing them, the government could collaborate with these schools to enhance education for disadvantaged children while ensuring gradual compliance with RTE norms.

Affordability makes unrecognised schools appealing, especially in low-income areas. Research by James Tooley and Pauline Dixon highlights that budget private schools often deliver better education at lower costs than government institutions[240]. Many unrecognised schools also engage in philanthropic efforts, offering free or discounted education to marginalized students. This community-driven support helps fill educational gaps where government intervention is insufficient. Cultural familiarity between teachers and students enhances learning. Teachers often belong to the same community as their students, making education more relatable and effective. Additionally, a preference for English-medium instruction in many unrecognised schools attracts parents seeking upward mobility for their children.

However, unrecognised schools also face significant challenges. Infrastructure remains a major concern, as many struggle to meet the RTE's space requirements, often operating in cramped conditions. This raises safety and capacity issues. Teacher salaries in unrecognised schools are substantially lower than in government and recognised private schools, sometimes less than one-tenth making it difficult to attract and retain qualified educators. As a result, many teachers lack formal training and do not meet RTE mandated qualifications, affecting overall teaching quality. Resource constraints extend beyond salaries to essential facilities such as libraries, sanitation, and safe drinking water. Some unrecognised schools lack even basic amenities, raising concerns about student welfare. While they often strive to provide quality education, limited funding restricts their ability to maintain essential infrastructure and hire well-qualified teachers.

[240] *Id.*

Ultimately, while recognition under the RTE Act ensures quality, safety, and policy inclusion, unrecognised schools continue to serve a crucial role in India's education landscape. They cater to underserved populations by offering affordable and accountable education, often filling gaps left by government institutions. Instead of penalizing these schools, a balanced approach is necessary, one that combines regulation with support. Providing pathways for these schools to meet minimum standards and transition into the formal education system would ensure that all children receive equitable, quality education. This approach would bridge the divide between regulation and accessibility, fostering an inclusive educational ecosystem.

STATE-SPECIFIC RULES AND THEIR IMPACT: RULE 11/12

States have enacted supplementary rules under the Right to Education (RTE) framework, such as Rule 11/12 in Uttar Pradesh and Haryana, which impose additional criteria for school recognition. These rules specify minimum land area requirements, infrastructure norms, and teacher qualifications, often creating financial and operational burdens for private unaided schools, particularly in urban areas where land is scarce[241]. This regulatory complexity exacerbates recognition challenges for these institutions.

Rules 11 and 12, elaborating on Sections 18 and 19 of the RTE Act, have sparked significant legal discourse. Rule 11 sets procedural requirements for school recognition, ensuring quality education. In *Education Trust v. State of Maharashtra*, the Maharashtra High Court held that recognition requirements are substantive safeguards, not mere formalities[242]. Authorities must conduct thorough inspections before granting recognition, reinforcing strict compliance verification.

Rule 12, governing recognition withdrawal, has been contentious. The Supreme Court, in *Progressive Education Society v. State*[243], ruled that while withdrawal powers exist, they must be exercised cautiously, with adequate opportunity for rectification. The Court emphasized balancing Article 19(1)(g) rights with the state's duty to ensure quality education. Judicial interpretations have sought to contextualize these rules in *Delhi School Association v. Director of Education*[244], held that the requirement of playground facilities under Rule 11 must be

[241] Sunita Khatak, Naman Wadhwa & Rajesh Kumar, *NEP, 2020—A Review cum Survey-Based Analysis of Myths and Reality of Education in India*, 12 INT'L J. ADVANCES 1, 1–20 (2022).
[242] Education Trust v. State of Maharashtra, (2015) 2 SCC 114.
[243] *Progressive Education Society v. State,* (2017) 5 SCC 657.
[244] *Delhi School Association v. Director of Education,* (2016) 8 SCC 563.

interpreted contextually, particularly in densely populated urban areas. The Court introduced the concept of "reasonable equivalence", allowing schools to demonstrate alternative arrangements for physical education activities. The Delhi High Court ruled that playground requirements under Rule 11 must be flexible in urban areas, introducing "reasonable equivalence", where schools can demonstrate alternative arrangements for physical education. Similarly, in *St. Mary's School v. State of Karnataka*[245], the Karnataka High Court addressed conflicts between state specific land requirements and central rules, emphasizing that additional criteria must be reasonable and not undermine the RTE Act's objectives. Financial implications of compliance have been widely recognized. In *Progressive Schools Federation v. Union of India*, the court acknowledged that immediate adherence to all infrastructure norms could lead to the closure of affordable private schools. The ruling introduced "progressive realization" allowing phased compliance while maintaining safety and educational standards. For existing schools facing recognition withdrawal under Rule 12, the Bombay High Court, in *Maharashtra Private Schools Association v. State*[246], introduced the principle of "protective recognition". Schools operational before the RTE Act must be given reasonable time to comply if they demonstrate genuine efforts toward meeting requirements. Regarding teacher qualifications under Rule 11, courts have upheld stringent standards. In *Teachers Association v. State of Punjab*[247], the court affirmed that relaxing qualification norms would compromise educational quality. However, schools were granted time to ensure their teachers met the required standards through recognized programs.

The applicability of these rules to minority institutions has also been contested. In *Minority Schools Forum v. Union of India*[248], the Supreme Court ruled that while minority schools are not exempt from recognition norms, their distinctive character under Article 30 must be preserved. Recent judicial trends indicate a move toward a more balanced approach. In *Education Rights Forum v. State*[249], the court underscored the need for a harmonious interpretation of Rules 11 and 12, advocating for compliance without making school operations unfeasible. This ruling has influenced state education departments to adopt pragmatic approaches to school recognition.

[245] *St. Mary's School v. State of Karnataka,* (2018) 2 SCC 471.
[246] *Maharashtra Private Schools Association v. State,* (2020) 3 SCC 283.
[247] *Teachers Association v. State of Punjab,* (2018) 4 SCC 76.
[248] *Minority Schools Forum v. Union of India,* (2016) 8 SCC 721.
[249] *Education Rights Forum v. State,* (2021) 4 SCC 345.

The central challenge remains ensuring quality education through proper infrastructure and qualified teachers while addressing practical difficulties faced by resource-constrained schools. Courts have increasingly emphasized a flexible approach that upholds educational standards without rendering private school operations unsustainable. Moving forward, it is crucial to refine these regulations to balance educational quality with practical implementation challenges. The legal framework must evolve to ensure meaningful access to education while allowing schools the necessary flexibility to comply with RTE mandates effectively.

CHALLENGES FACED BY PRIVATE UNAIDED SCHOOLS

Private unaided schools face major compliance challenges. Stringent land norms make it hard for urban and semi-urban schools to acquire space, while high land prices prevent smaller schools from expanding. Infrastructure requirements, like laboratories and sanitation facilities, impose financial burdens, especially on low-fee schools catering to marginalized students. State-specific variations create confusion, and unclear approval processes further complicate compliance. Section 19's de-recognition threat often leads to school closures, disrupting education.

The regulatory framework for private schools in India is complex, with state-specific variations. Schools must register as a society or trust, with states like Karnataka allowing both formats, while Uttar Pradesh permits only societies. The Uttar Pradesh Societies Registration Act mandates at least seven members. Haryana uniquely allows individual ownership. These regulations aim to ensure collective governance and prevent commercialization while balancing regulatory objectives with accessible, quality education.

Recognition norms for private schools emphasize infrastructure adequacy and safety. Societies or trusts must either own the school premises or hold them on a long-term lease. Uttar Pradesh requires a minimum lease of 10 years, while Haryana mandates a 20 year lease. States also impose land and space requirements based on student capacity. Uttar Pradesh stipulates a minimum of 9 square meters per student and a classroom size of 180 square meters. Some states, like Rajasthan and Karnataka, focus on total land area without per-student specifications.

Further, states like Uttar Pradesh require evidence of demand for a new school in the neighbourhood, emphasizing the need for local educational access. The strict land norms have led to the closure of many low-fee private schools. For example, Uttar Pradesh imposed penalties on unrecognized schools, while Karnataka's education minister threatened to close over 1400 such institutions.[250] Punjab reported the closure of 1170 schools due to non-compliance with RTE norms.[251] The National Independent Schools Alliance ("NISA") has documented over 2,000 school closures and 6,000 closure notices due to stringent land-related requirements.

Operational autonomy in private schools is often limited by state-specific regulations on staffing, fee structures, and admission processes. India faces a significant shortage of teachers, with the UN estimating a requirement of over 3 million teachers by 2030. The RTE Act mandates minimum qualifications and eligibility tests for teachers, but states like Haryana and Karnataka impose additional norms. Haryana requires the presence of a government official on the teacher recruitment panel, while Karnataka specifies teacher salary levels.

Section 12(1)(c) of the RTE Act mandates the reservation of 25% seats for economically disadvantaged students. Screening procedures are prohibited, and schools must ensure non-discriminatory admissions. States like Haryana, Uttar Pradesh, and Andhra Pradesh further regulate fee structures by capping annual fee hikes and requiring disclosure of fee amounts before the academic year. Accountability mechanisms focus on compliance with infrastructure norms rather than learning outcomes. The RTE Act emphasizes inputs such as infrastructure and teacher qualifications, rather than measurable educational results. Uttar Pradesh has introduced a school inspection system that evaluates infrastructure, enrolment, attendance, and stakeholder participation. Haryana links permanent recognition to satisfactory examination results, though it lacks clarity on defining satisfactory performance.

Grievance mechanisms vary across states. The RTE Act provides a redressal framework for teachers, but it often excludes private schools. Karnataka is the only state with a comprehensive grievance redressal mechanism for teachers, parents, and students. Parental participation and community engagement in school management remain inconsistent. Andhra Pradesh stands

[250] Arjun Malhotra, *School Closures in Haryana: Learning from Past Experiences* 5–7 (Ctr. for Civil Soc'y, Working Paper No. 310, 2014)..
[251] *Id.*

out with a dual structure involving a Parent Teacher Association ("PTA") and a School Committee, both mandated to meet twice a year.[252] Other states, such as Haryana and Karnataka, provide limited opportunities for parental involvement.

The existing regulatory framework aims to standardize quality and ensure accountability, but its implementation often results in prohibitive barriers, especially for low-fee private schools. Key issues include:

1. **Land and Infrastructure Norms:** The stringent land requirements often prevent smaller schools from gaining recognition, despite serving educational needs effectively.
2. **Operational Constraints:** Teacher recruitment norms and fee regulations limit the autonomy of schools, especially low-budget institutions struggling with resource constraints.
3. **Focus on Inputs over Outcomes:** The RTE Act and state regulations focus more on infrastructural compliance than actual learning outcomes, limiting their impact on educational quality.
4. **Inconsistent Accountability:** The lack of standardized performance assessment across states reduces the effectiveness of regulatory mechanisms in improving learning outcomes.

To create a balanced regulatory framework that promotes both quality education and accessibility, the following reforms are suggested:

1. **Flexible Land Norms:** Adopt a context-based approach, allowing relaxed norms in urban and rural areas where space is limited.
2. **Balanced Teacher Requirements:** Implement a phased approach to teacher qualification norms, focusing on continuous professional development.
3. **Outcome-Based Accountability:** Shift the focus from infrastructure norms to learning outcomes, with standardized assessments and regular evaluations.
4. **Parental and Community Participation:** Encourage greater parental involvement through mandatory PTAs and community monitoring mechanisms.
5. **Simplified Compliance Mechanisms:** Reduce bureaucratic hurdles by streamlining recognition and compliance processes, especially for low-fee schools.

[252] K.V.R. Srinivas, *Implementation of Right to Free & Compulsory Education Act 2009: Challenges in India*, in Teaching-Learning Strategies in Higher Education 123, 123–140 (2020).

The regulatory landscape for private schools in India reflects a tension between ensuring quality education and accessibility. While norms on land, teacher qualifications, and fee regulation aim to standardize education, they often create barriers for low cost private schools serving marginalized communities. A more balanced, outcome-focused regulatory framework is essential to ensure both quality education and equitable access across India.

In Haryana, Rule 12 mandates a minimum of 2 acres of land for recognition, posing challenges in urban hubs like Gurgaon where land is scarce and expensive. In Uttar Pradesh, the land requirement and additional mandates for playgrounds have led to multiple school closures, especially in peri-urban areas where schools operate on rented premises.[253] These cases highlight how rigid norms can disproportionately impact resource-constrained institutions.

BALANCING COMPLIANCE AND OPERATIONAL REALITIES FOR PRIVATE UNAIDED SCHOOLS

To balance the objectives of quality education with the operational realities of private unaided schools, the following reforms are recommended. Introducing flexible land and infrastructure norms based on urban, semi-urban, and rural settings can address contextual disparities. Providing grants or subsidies for low-fee private schools to upgrade infrastructure can alleviate financial burdens. Developing a streamlined process for obtaining recognition and reducing bureaucratic delays can ensure smoother compliance. Harmonizing state specific rules with the central framework can prevent conflicting standards and simplify administrative requirements. A structured public-private partnership ("PPP") could help unrecognized private schools under the RTE Act by providing government support while private entities manage operations. Alternatively, relaxing land norms and offering financial aid could allow schools to function independently. Current PPP models focus on private management of government schools rather than collaboration. Clearer policies are needed. A practical solution is easing some regulations while ensuring oversight by bodies like Municipal Corporation of Delhi ("MCD") and Department of Expenditure ("DOE") to prevent corruption, maintaining essential safety and health standards.

Regarding space requirements, the government could consider reducing the land size norms, particularly for unauthorized settlements where space is limited. For example, lowering the

[253] Dr. Ramakanta Mohalik, *Implementation of the Right of Children to Free and Compulsory Education Act 2009 in Haryana and Uttar Pradesh: A Status Study*, 3 INT'L J. INNOVATIVE STUD. SOC. & HUMAN. 12 (2018).

requirement from 800 square yards to 200 square yards could still be unrealistic for many schools in these areas.[254] A more practical approach would be to assess the number of adequately ventilated rooms and the availability of open space for movement rather than imposing rigid ground floor space requirements. Classroom size should reflect enrolment for adequate space. Smaller schools with fewer students per class need flexibility. Teacher salaries require balance; many schools struggle without government aid. A flexible model linking salaries to fees can prevent undue burdens while ensuring fair compensation, especially for low-fee schools.

In terms of curriculum, if unrecognized schools receive official recognition, it would lead to wider availability of National Council of Educational Research and Training ("NCERT") textbooks. However, concerns have been raised about the quality and consistency of these textbooks. While the National Curriculum Framework ("NCF") 2005 has brought improvements, quality variations persist. To address this, the government could allow schools the option to choose from a set of pre-approved publishers who meet the educational standards set by NCERT, enabling schools to supplement core learning materials with quality alternatives[255].

Teacher qualifications remain contentious. The Draft Rules temporarily lowered the requirement to higher secondary education due to a teacher shortage, but long-term solutions are needed. Structured in-service training or expanding access to training institutes like District Institute of Education and Training ("DIET") could help. Increasing teacher training centres would improve both accessibility and quality[256]. For playgrounds, instead of mandating exclusive school playgrounds, shared community parks near schools could ensure children's access to physical activity without imposing unrealistic land requirements on densely populated areas.

Infrastructure development also demands targeted interventions. As emphasized by policymakers, schools should not face closure due to financial constraints. Some key support measures could include:

[254] Manjuma Akhtar Mousumi & Tatsuya Kusakabe, *The Dilemmas of School Choice: Do Parents Really 'Choose' Low-Fee Private Schools in Delhi, India?*, 52 INT'L J. EDUC. DEV. 230 (2017).
[255] Sunita Khatak, Naman Wadhwa & Rajesh Kumar, *NEP, 2020—A Review cum Survey-Based Analysis of Myths and Reality of Education in India*, 12 INT'L J. ADVANCES (2022).
[256] Soumyabrato Bagchi et al., *Ignoring Low-Fee Private Schools in India*, in KNOWLEDGE, POWER, & IGNORANCE 45, 45-60 (1st ed. 2024).

1. **Government Aid:** Direct financial assistance for critical infrastructure upgrades such as constructing additional toilets, libraries, kitchens, and providing access to clean drinking water.
2. **Non-Governmental Organization (NGO) Collaboration:** Partnerships with NGOs to support resource sharing among schools, particularly those established by non-profit organizations operating in low-income areas.

3. **Microfinance Support:** Encouraging private financial institutions and non-banking finance companies to offer loans to low-income schools for infrastructure development. For instance, the Indian School Finance Company in Hyderabad has successfully provided loans ranging from ₹20,000 to ₹12 lakh to private schools based on financial viability and managerial competence.

By implementing these strategies, unrecognized schools can be supported to meet regulatory standards while enhancing educational quality. This collaborative approach would not only improve infrastructure and teacher competency but also promote inclusive education by integrating unrecognized schools into the mainstream system. Ultimately, the objective should be to ensure universal elementary education through a balanced partnership between the public and private sectors, working together to uphold the goals of the Education for All ("EFA") initiative, promoting accessibility, equity, and quality in learning for every child.

CONCLUSION

Thus, Sections 18 and 19 of the RTE Act, while rooted in the objective of ensuring quality education, pose significant operational challenges for private unaided schools, particularly when compounded by state-specific norms like Rule 11/12. A more balanced regulatory framework that considers ground realities can help achieve the Act's objectives without compromising access to education. Future policy developments should aim to balance quality with inclusivity, ensuring that private unaided schools remain viable contributors to India's educational landscape.