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Right to Education: An Analysis

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Abstract: *Every day with new researches, literature in most of the disciplines is becoming voluminous and the variant results produced also make it incomprehensible for meaningful outcomes. Analytical technique evolves as a solution which supplies common cognizant results and fulfills the need for studies to reach at communality by synthesizing their findings. This paper aims at analyzing the Right to Education in India and enquires the effect of non-implementation of policies if any. Analytical results provide notable differences between declaration of policies and their implementation, concluding that governmental concern for Education is very high but they lack in implementation strictly. In the light of these findings, the paper provides sufficient cue for society towards Education with more opportunities as they can influentially fill the gaps in social system. For the purpose there should be an umbrella body to bring all ministries to work together towards a common goal. RTE Act, 2009, offers a great opportunity and can deliver on the long standing commitment of providing basic and quality education to accomplish the critical goal.*

Key Words: *Right to Education, Community, Elementary Education, Capitation Fee, School*

Introduction

Education is any act or experience that has a formative effect on the mind, character or physical ability of an individual. In its technical sense, education is the process by which society deliberately transmits its accrued knowledge, skills and values from one generation to another. A right to education has been created and recognized. Article 2 of the first protocol to the European convention on human rights in 1952, obliges all signatory

parties to guarantee the right to education. In 1966, UN international covenant on economic, social and cultural rights, guaranteed this right under article 13.

The 1960 UNESCO convention against Discrimination in Education defines Education in Article 1(2) as all types and levels of education, access to education, the standard and quality of education, and the conditions under which it is given.ⁱ

The wider meaning of education has been recognized in article 1(a) of UNESCO's 1974 Recommendation concerning education for international understanding, co-operation and peace and education relating to human right and fundamental freedoms.ⁱⁱ

Human Right are regarded as worth of respect and protection the right to education is recognized as a human right and is understood to establish an entitlement to education. In August 2009, parliament passed the historic right of children to free and compulsory education (RTE) Act, 2009. It provides a justifiable legal frame work that entitles all children between the age of 6 to 14 years to an education of reasonable quality, based on principles of equity and non discrimination. It provides for children's right to free and compulsory admission, attendance and completion of elementary education. More importantly, it provides for the child's right to education that is free from fear, stress and anxiety. The right of children to free and compulsory education Act (RTE), which was passed by the Indian parliament on 4 August, 2009 came into force on 1 April, 2010. This was a historic day for the people of India as from this day the right to education was accorded the same legal status as the right to life as provided by Article 21-A of the Indian constitution. The first time in the history of India a law was brought into force by the speech by the Prime Minister. The law came into effect in the whole of India except the state of Jammu and Kashmir. Prime Minister of India stated that, "We are committed to ensuring that all children, irrespective of gender and social category, have access to irrespective of gender and social category, have access to education. An education that enables them to acquire the skills, knowledge, values to become responsible and active citizens of India". The Prime Minister emphasized that it is important for the country that if we nurture our children and young people with the right education, India's future as a strong and prosperous country is secure.

Basic features of RTE Act, 2009

The right of children to free and compulsory education Act provides that every child in the age group of 6-14 years will be provided 8 years of elementary education in an age appropriate classroom in the vicinity of his/her neighborhood. It requires all private schools to reserve 25% of seats to children from poor families. No seats in this quota can be left vacant. These children will be treated on par with all other children in the school and subsidized by the state at the rate of average per learner costs in the government school (unless the per learner costs in the private school are lower). It also prohibits all unrecognized school from practice, and makes provisions for no donation or capitation fee and no interview of the child or parent for admission.ⁱⁱⁱ All the private schools shall be required to enroll children from weaker sections and disadvantaged communities in their

incoming class to the extent of 25% of their enrolment. The Act also provided that no child shall be held back, expelled, required to pass a board examination until the completion of elementary education. No child shall be denied admission for want of document; no child shall be turned away if the admission cycle in the school is over and no child shall be asked to take an admission test. Children with disabilities will also be educated in the mainstream schools unit 18 years of age. Any cost that prevents a child from accessing school will be borne by the state which shall have the responsibility of enrolling the child as well as ensuring attendance and completion of 8 years of schooling. The RTE Act is the first legislation in the world that puts the responsibility of ensuring enrollment, attendance and completion on government. It is the parent's responsibility to send the children to schools in the U.S. and other countries.^{iv}

All the schools are required to prescribe to norms and standards laid out in the Act and no school that does not fulfill these standards within 3 years will be allowed to function. The guidelines of the RTE Act, which are to be implemented within three years from now include several necessary measures. Firstly, the government should ensure a proper school within 5 km. of every neighborhood. The school should have sufficient number of qualified teachers to teach upto the fifth level norms and standards of teacher qualification and training are also being laid down by an academic authority. For every 40 or 30 children there should be at least one teacher and a head is necessary if the number of students exceed 100. All the private schools will have to apply for recognition, failing which they will be penalized to the rupees 1 lakh and if they still continue to function will be liable to pay rupees 10,000 per day as fine. The school building needs to be all weather building liaised with a kitchen, a storeroom and one room for every teacher apart from sufficient number of classrooms. A playground too is necessary where students will be able to have modern recreation facility, sports material, equipments and other necessary things need to be provided to the students for free education.

RTE Act, 2009 has been a part of the directive principle of the state policy under article 45 of the constitution, which is part III of the constitution of India. And rights in Part IV are not enforceable. For the first time in the history of India the right to education has been made enforceable by putting it chapter 3 of the constitution as Article 21 A.

Objective of the Study

The main objective of the study is to analyze various challenges in the implementation of RTE Act, being faced by Government.

Main provisions of the RTE Act

1. All children of the age of six to fourteen years have a right to free and compulsory education in a neighborhood government school till completion of elementary education (classes 1-8). This neighborhood school is to be established by 2013

2. All children have a right to full-time elementary education in a recognized school. No part-time classes/non-formal schools or unrecognized schools are considered as legal alternatives.
3. All recognized schools must provide good quality education which includes a set of basic facilities, minimum instructional hours and an adequate number of teachers, as specified in the Act. These provisions are to be implemented by 2013. All teachers in recognized schools must be qualified by 2015.
4. Under the 25% reservation requirement of the Act, some economically and socially disadvantaged children, as well as those with disabilities will receive free education in private unaided and minority aided schools, as well as specified schools such as Kendriya Vidyalayas, Navodaya Vidyalayas and Sainik Schools.
5. No school can charge donations or capitation fees, and neither can student admissions be based on the testing of children or any screening procedure, including the interviews of either children or their parents.
6. No child can be subject to physical punishment or mental harassment, be held back in a class, or be expelled from school till completion of elementary education.
7. Most schools are required to constitute a School Management Committee (SMC), composed mainly of parents. Its main functions are to monitor the working of the school, monitor the utilization of school grants and prepare the school development plan.
8. While Central and State Governments have joint funding responsibilities, the State Governments and Local Authorities are mainly responsible for implementation of the Act.
9. The National Commission for Protection of Child Rights (NCPCR) and every State Commission for Protection of Child Rights (SCPCR) is responsible for monitoring the implementation of the Act, and for inquiring into complaints against violations of the Act.
10. A small proportion of schools are exempt from all or some of the provisions of the RTE Act.

Closer looks at the provisions of the act have seen some disconcerting features. First is the act fortifies the multitier and unequal education structure as opposed to common school system of the various categories of schools, a clear distinction is made as to how much of the burden of providing free and compulsory education would fall on each kind.^v Section 12.2 of RTE Act, 2009 states that “The school specified in sub-clause (iv) of clause (n) of section 2 providing free and compulsory elementary education as specified in clause (c) of sub-section (1) shall be reimbursed expenditure so incurred by it to the extent of per-child expenditure incurred by the state, or the actual amount charged from the child,

whichever is less, in such manner as may be prescribed. While the government run schools would cover costs associated with all its words, the government aided schools would be accountable to admitting students proportionate to 25% of their annual grants. The Act requires that navodayavidyals, kendriyavidyalayas and sainik schools and unaided schools admit 25 children from the weaker sections and disadvantaged groups of the population; it ensures reimbursement by the government to these unaided schools, based on per child expenditure incurred towards admitting these students.

The states have seen claiming that they do not have the financial capacity to cover all the schools needed for free and compulsory education. Thus it was clear that the central government will be required to subsidize the states. A committee was set up to study the funds requirement and funding initially estimated that Rs. 171,000 crores would be required in the next five years to implement the act, and in April 2010 the central government agreed to sharing the funding for implementing the law in the ratio of 65 to 30 between centre and the states, and a ratio of 90 to 10 for the north-eastern states.^{vi}

As is very much clear from the above that government was keen to get the act operational at the earliest at any cost. The government is temporarily subsidizing the costs of private schools for providing education. The government here is not specifying the time-frame up to when it would continue to reimburse the costs of education for private schools. This is not only the worrisome aspect about the timelines with regard to the act. Several other provisions also scope for the government to delay effective implementation.

The question of establishing a government neighborhood school where there is none within three years of commencement of Act is a case in point.^{vii} The Act does not clarify the area or limits for establishing a neighborhood school, leaving this to be decided by the government at a later date through rules that it may deem fit.^{viii}

Section 23.2 RTE Act 2009 says that, “Where a state does not have adequate institutions offering courses or training in teacher education, or teachers possessing minimum qualification as laid down under sub-section (1) are not available in sufficient numbers the central government may, if it deems necessary, by notification, relax the minimum qualification required for appointment as a teacher, for such period, not exceeding five years, as may be specified in that notification: provided that a teacher who, at the commencement of this Act, does not possess minimum qualifications as laid down under sub-section shall acquire such minimum qualification within a period of five years.

Thus, the Act, also allows for unqualified teachers to continue for five years after the act comes into effect. This only reflects the government’s non-serious approach to implementing the act and its disregard of quality of outcomes. Moreover such unqualified teachers salary and also of others is significant oversight in the Act. The key norms and standards listed in the act would need to be adhered to by all the schools, failing which no school may be established. Section 20 of RTE Act provides a contradictory provision that central government may make rule to change the schedule by adding or even omitting

norms or standards. The government here seems unable to set the fixed basic minimum norms for a school.

Table 1 schedule outlining norms and standards for a school

1. Number of teachers	30:1 (fro class I-V) 35: 1 (for class VI-VIII) At least three subject teacher (for class VI-VII)
2. Building	1 classroom per teacher 1office-cum-store for headmaster separate toilets Drinking water Kitchen for mid-day meal preparation playground Boundary wall
3. Minimum number of working days in an academic year	200 working days (for class-I-V) 220 working days (for class VI-VIII)
4. Minimum number of working hours week for a teacher	45 teaching including preparation hours
5. Teaching/learning equipment	Provided to each class
6. Play material, games, sports equipment	Provided to each school
7. Play material, games, sports equipment	Provided to each class

Source: RTE Act 2009, pp 12-13

Implementation and Limitations of RTE

The national commission for protection of child rights has been designated as the agency to monitor provision of the right to free and compulsory education Act.^{ix} To ensure that the RTE Act is implemented successfully in letter and spirit, the NCPCR has taken the initiative to build a consensus among institutions, government departments, civil society and other stakeholders. It has instituted an expert committee comprising officials from various government departments, persons of eminence and experience in the field of education, to focus on the roadmap for proper implementation of the RTE.

The committee, has held four meetings so far, has chalked out a plan to facilitate better monitoring. This includes establishing a separate division within the NCPCR to focus exclusively on RTE. This division would be co-ordinated by two commissioners and assisted by a separate staff in all its activities.^x This division would establish links with the Ministry of Human Resource Development and also be supported by it. It would also be necessary to establish modalities of interaction with the MHRD so that they can work to ensure the successful implementation and monitoring of the RTE Act. A third strategy

suggested was the appointment of state representatives to act as the “eyes and ears” of the NCPCR in different states. They will also facilitate follow up of complaints received from their states. Meetings with officials from other ministries that are affected by the RTE Act such as the Ministry of Social Justice and empowerment, Labor Ministry, Tribal Affairs Ministry and Ministry of Panchayati Raj were convened for greater co-ordination and convergence. The children to benefit from RTE, it is important that there is smooth co-ordination and communication between NCPCR and these ministries.^{xi}

An office memorandum was issued on 12.10.2009 by National Commission for protection of child rights whereby it was declared that NCPCR has been assigned the Responsibilities under RTE Act, 2009.

The National Commission for Protection of Child Rights (NCPCR) has been assigned with the following additional responsibilities for monitoring of child’s right to education under section 31 of the Right of Children to Free and Compulsory Education Act, 2009.

- i. To examine and review the safeguards for rights provided by or under the Act and recommend measures for their effective implementation;
- ii. To inquire into complaints relating to child’s rights to free and compulsory education; and
- iii. To take necessary steps as provided under sections 15 of the Commissions for Protection of Child Rights (CPCR)Act, 2005.^{xii}

According NCPCR issued its Review Report covering 23 states, which reveals that state governments are going “against the letter and spirit” of the Right of children to free and Compulsory Education Act, 2009. The report points out “major gaps”, in most of the state’s RTE rules regarding the provision of free education, documentation for age proof composition and formation of school Management Committees, neighborhood schools and 25 percent reservation in private schools. State of Haryana has included “free education” but has not mentioned other entitlements like free texts books, writing material and uniforms which are provided in section 12 of the RTE Act. Andhra Pradesh RTE rules, for instance, say that the Sarpanch shall be the Chairperson of School Management Committee in rural areas and Councilor/ corporate in Municipal areas. State of Assam has authorized a government official- District Education officer to be involved in election of chairperson. The review report points out that this may lead to arbitrariness, discrimination and are unfair to the parents’ of children belonging to weaker and disadvantaged groups.

Gujarat State rules provide another contrary provision of putting a member from the management or the Trust of School in SMC.

State of Karnataka rules limit to neighborhood area for class VIII has been provided as a walking distance of 5 km. While it is 3 km in RTE Act. In State of Punjab, parents and guardians are required to apply for admissions against 25% seats in private schools if

children of such background are unable to get admission in government or aided schools.^{xiii} Tamil Nadu state government issued an order on November 8, 2011 which expanded the definition of 'child belonging to weaker section' to mean one whose parents or guardians earned less than Rupees 2 lakh a year. One person from Tamil Nadu, M. Kochadai Muthiah, who earns a living by ironing clothes at Moovendar Nagar, says "My Son, studying in private English medium school, has been promoted to standard III this year. I enquired about claiming benefits under the RTE Act. But they say reservation was available only in LKG. In any case, my son cannot claim a right to be admitted under the RTE in the same school because it is beyond 3 kilometers from my residence. This act is of no use to me and I continue to pay a fee of Rs. 500 every month for my son".^{xiv}

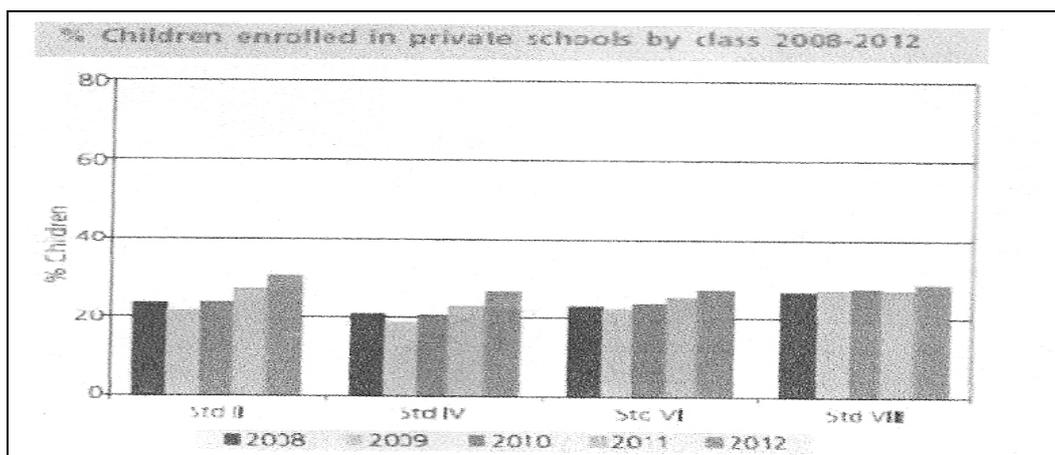
NCPCR has taken suo moto cognizance of Reports, TV Serials and the Internet where cases of violation of child rights are reported and also acted on specific complaints that are registered with the commission. During the year 2009-10, the commission received 764 complaints pertaining to violation of child rights. Of these, 247 complaints were related to the education sector.

One Tribal village Bahul, 70 km away from Bramni Jashpur had only one primary school which was opened up by government in 2008. Two teachers were appointed but they never came to school. The complaint was made to collector and Ministers also about the absence of teachers but nothing happened. Sarpanch of village PanchayatKopa Mrs. Madhumati Bai approved the fact that a primary school was started under Sarva Shiksha Abhiyan but teachers never turned up..... 65 families of village agreed to contribute 5 Rs. Each and started a school in 2010 themselves. Miss Manju Akka who has completed 10+2 was appointed teacher with a salary of 500/- per month.^{xv}

About the status of RTE implementation across India, different organizations have carried out studies focusing both on the educational infrastructure and quality of Education. However, the most comprehensive survey is the Annual Status of Education Report (ASER) which is presented by Pratham, an education foundation conducted survey in every rural district of India in 2012, survey reached 567 districts, 16,166 villages, and 5,96,846 children. About 500 organizations and 25,000 ASER seeks to collect information on RTE Act.

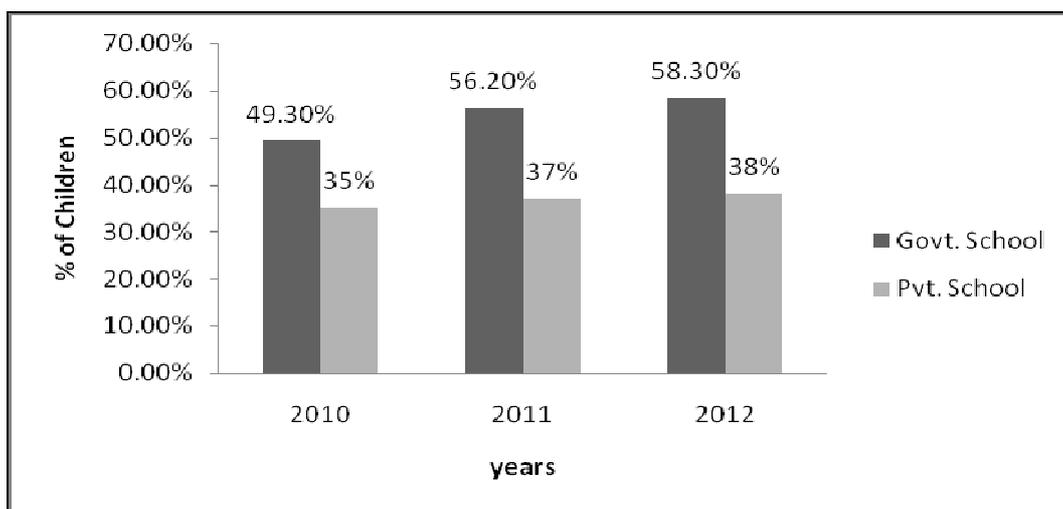
Girls in the age group of 11 to 14 years are often the hardest to bring to school and keep in school. In 2006, in eight major states, more than 11% girls in this age group were not enrolled in school. By 2011, this figure had dropped to less than 6.5% in 3 of these states (Jharkhand, Gujarat and Odisha) and less than 5% in 3 others (Bihar, Chhattisgarh and West Bengal). The situation in these states remained more or less unchanged in 2012. However in Rajasthan and Uttar Pradesh, the proportion out of school girls (age 11-14) has increased from 8.9% and 9.7% respectively in 2011 to more than 11% in 2012.

Preference for private continues in almost all states



At the All India level private school enrollment has been steadily since 2006. The percentage of 6 to 14 year old enrolled in private schools rose from 18.17% in 2006 to 25.6% in 2011. This year this number has further increased to 28.3%.

Children in Std. V who cannot read Std. II level text



Since 2009, private school enrollment in rural areas has been rising at an annual rate of about 10% if this trend continues, by 2018 India will have 50% children in rural areas enrolled in private schools.

In 2010 nationally, 46.3% of all children in Std. V could not read a Std. II level text. This proportion increased to 51.8% in 2011 and further to 53.2% in 2012. For Std. V children enrolled in government schools, the percentage of children unable to read Std. II level text has increased from 49.3% (2010) to 56.2% (2011) to 58.3% (2012).

The percentage of all children enrolled in Std. III who cannot read a Std. I level text has increased steadily from 53.4% (2009) to 54.4% (2010) to 59.7% (2011) to 61.3% in

2012. For children enrolled in government schools, this figures has increased from 57.6% in 2010 to 64.8% in 2011 to 67.7% in 2012.

Reading levels of government primary schools continue to be a cause of serious concern.

Schools Meeting Selected RTE Norms 2010-2012

% Schools Meeting the Following RTE Norms.		2010	2011	2012
Pupils-Teacher and Classroom-teacher Norms	Pupil-Teacher ratio	38.9	40.8	42.8
	Classroom- Teacher ratio	76.2%	74.3	73.7
Building	Officer/Store/Office-cum- store	74.1	74.1	73.5
	Playground	62.0	62.8	61.1
	Boundary wall/ fencing	51.0	53.9	54.7
Drinking water	No facility for drinking water	17.0	16.7	16.6
	Facility but no drinking water available	10.3	9.9	10.4
	Drinking water available	72.7	73.5	73.0
Toilet	No Toilet facility	11.0	12.2	8.4
	Facility, but toilet not usable	41.8	38..9	35.1
	Toilet usable	47.2	49.0	56.6
	% Schools with no separate provision for girls toilet	31.2	22.7	21.3
	Schools with Separate Girls' Toilet-% schools with			
Girls Toilet	Toilet Locked	18.7	15.0	14.1
	Toilet not usable	17.2	18.7	16.4
	Toilet usable	32.9	43.7	48.2
Library	No Library	37.4	28.7	23.9
	Library but no books being used by children	24.7	29.1	32.2
	Library books being used by children on	37.9	42.2	43.9

	day of visit			
Mid-day Meal	Kitchen shed for cooking mid-day meal	82.1	83.7	84.4
	Mid-day meal served in the school on day of visit	84.6	87.5	87.1

Although The RTE norms are not complied with by all the schools. But since then, across the country compliance with norms and standards specified by RTE has improved since 2010

Conclusion and Suggestions

For all its flaws, the RTE Act is a progressive piece of legislation that aims to take education to the masses and fill the gaps in the social system. Supreme court on 12 July, 2013 heard a plea challenging the Delhi High Court order that RTE Act is not applicable to nursery admission in unaided private schools. The Central Government had informed the court that the RTE Act, 2009 did not apply to nursery admissions and a state government may have its own policies for this class. Lt. Governor Najeeb Jung released Nursery admission norms, on 18th December, 2013 for 2014-2-15. It abolished the 20 percent management quota and ensures that schools would only admit children living within a radius of 6 km. The advantage sought by these norms is that a student living in close proximity to schools will get part of RTE approach that seeks to achieve the same. Minister of state for HRD Shashi Tharoor also welcomed the abolition of management quota for nursery admission and said the new rules are in sync with RTE mandate. The private unaided schools had moved the division bench of High Court against the order of its single judge who had refused to grant them interim relief or stay the notification. Private schools objected the notification and contended that the quality of students who are admitted to their schools affect them.

On one hand government is failing to perform its duty and on the other hand, the association of private schools, who prefers to remain anonymous, feels that the government is forcing private schools to reserve seats without making sufficient financial allocations. In a presentation on RTE, and learning outcome survey by NCERT of class III, V, and VIII students, it was said that a lot has been achieved in meeting RTE parameters, against the target of 19.82 lakh teachers, 14.80 lakhs have been recruited as of September 30, 2013. Also, 90% of schools across the country had toilets while 95% had drinking water supply. During 2013-14, 2,08,731 primary schools and 1,59,731 upper primary schools were sanctioned.

On the key issue of redress system for better implementation of RTE mandate, 19 states had set up decentralized grievance redress systems while 24 states had set up school management committees, notifying their roles and responsibilities. While the Survey report on status of implementation of RTE Act by Annual Status of Education Report (ASER)

concluded the different ratio much less than that declared. Moreover the grievance redressal responsibility given to School Management Committees hardly seem to work for better implementation of the Act as SMC, promoted by the Right to Education law to oversee school operations, are easily captured by local principals and promoters. SMC's need to be kept independent with participation from parents, educationists and teachers. SMCs and parent-teacher associations should have the right to conduct school and teacher performance reviews, linking them to incentives and promotions.

The percentage of admission of students in private schools is increasing year by year. Infrastructure, lack of funding, shortage of teachers and great diversity of citizenry all make complete implementation of RTE Act very difficult. Because of all these reasons citizens are flocking to private schools. The commercialism of schooling is one major unintended consequence of RTE Act. In order to compete with private schools, besides the infrastructural developments, teacher development and trainings must be pursued. In case of private schools, complaints about nursery admissions or fee like are generally looked at by the directorate of education but issues related to school infrastructure, teacher attendance are not under direct control of the state government. The power to hear such complaints must be given to lokayukta in states.

To effectively implement the RTE Act, the Human Resource Development Ministry, Labour Ministry, Women and Child Development Ministry, Panchayati Raj Ministry and Rural Development Ministry have to work together. There should be an umbrella body that brings all these agencies together to work towards a common goal. The RTE Act, 2009, offers a great opportunity to correct the anomaly of poor education outcomes, and can deliver on the long standing commitment of providing basic and quality education to accomplish the critical goal.

Notes

ⁱ Beiter, clause Dieter (2005) The Protection of the right to education by international law. The Hague: Martinus Nijhoff

ⁱⁱ Ibid

ⁱⁱⁱ En.wikipedia.org

^{iv} ibid

^v Section 12.1 RTE Act, 2009

^{vi} www.authorsream.com

^{vii} Section 6, RTE Act, 2009: For carrying out the provisions of this Act, the appropriate government and the local authority shall establish, within such area or limits of neighborhood, as may be prescribed, a school, where it is not so established, within a period of three

^{viii} Section 38 2b RTE Act 2009 “The appropriate government may, be notification, make rules in particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely the area or limits for establishment of a neighbourhood school, under section 6.

^{ix} www.india.gov.in

^x [cseindiaport of word press. Com](http://cseindiaportofwordpress.com)

^{xi} Ibid.

^{xii} Office Memorandum, NCPCR, F.No. 25.011/07/2009-NCPCR (PD) dated 12.10.2009.

^{xiii} States not following Central RTE Act Provisions: NCPCR report- The Hindu; 16/1/14.

^{xiv} Advantages and Disadvantages of RTE Act- The Hindu dated 16/1/14.

^{xv} Dainik Bhaskar dated 18th Jan, 2014, page 4.
