



## Right to Education Act 2009: Letting Disadvantaged Children Down?

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### Abstract

*Despite having enormous programmes for achieving universal quality education the government did not succeed in this, as there are still large number of disadvantaged children out of school due to poor quality of education services and defects in implementation of policies by government authorities. Strong resistance of private schools and upper caste parents to reservation provided under Clause 12 of RtE Act 2009, rapid growth of private schools and the inability to achieve universal quality education shows the existence of caste discrimination in the education system. Therefore, the assumptions behind this study were; private schools were not complying with such Clause 12 of RtE for various reasons, government authorities were not properly enforcing, parents of targeted children are unaware of their rights, and disadvantaged children were unable to access private schools. This research paper is aimed to evaluate the role of the Government establishment in implementation, how private schools are dealing with the Clause 12 of RTE Act 2009 and what are perceptions of Upper and lower caste parents on effectiveness of this Clause.*

**Keywords:** Right to education, reservation, disadvantaged, children, discrimination.

### Introduction

There were several government programs since 1980s to improve public school attendance, but their record can be considered mixed at best. In 2005, the first draft of the Right to Education (RtE) by Central Advisory Board of Education (CABE) was presented in parliament, The CABE proposed the provision of 25% reservation for disadvantaged children in private schools to reduce social inequality and to bridge the gap between public and private schools in terms of quality of education. The bill was strongly criticised and opposed by private school administrations and upper caste parents on provision of 25% reservation. Initially Indian Law Commission had proposed 50% reservation for disadvantaged children in private schools<sup>1</sup>.

However, after long debate and intervention by civil society organisations in favour of such Clause, the bill was approved by parliament in August 2009 with a provision for 25% reservation in private schools under Clause 12 of “The Right of Children to Free and Compulsory Education Act, 2009 (RtE)” which is being implemented since April 2010<sup>2</sup>.

The private schools and upper class elites challenged the Clause 12 in the Supreme Court but the Court upheld the validity of the RtE Clause 12 in April 2012. This shows that private schools and upper caste elite do not want disadvantaged children to get equal opportunity and mix with upper caste children. According to scholars Majumdar and Mooij upper class elites started to withdraw their children from public schools to private when the government recognised education as fundamental right of all children in 2002. The authors described a case of a private school when clause 12 is being implemented, where the

Principal stated that he cannot be comfortable with parents of a child from lower strata<sup>3</sup>

According to Kingdon, poor performance of public elementary schools caused rapid growth of private schools in India. Public schools are poor because these are suffering from lack of resources, teacher’s absenteeism, poor implementation of education programs and policies<sup>4</sup>. Whereas private schools are known for good quality education in Indian society and mostly economically privileged class get access. Caste discrimination and social inequality is thus visible in the school education system and disadvantaged children are left with little choice but to attend poor quality public schools.

According to National Sample Survey Office (NSSO, 2007-08) Public School dropout rate is also very high; most of the children abandon at elementary level. At the national level, by class V, every third child leaves school and by class VIII every second child abandons classes. Scholar Sikdar wrote an article which shows that 43% of children from rural areas and 34% from urban zones leave at secondary school in India. This information demonstrates that the public school dropout is high<sup>5</sup>.

### Methodology

#### Rationale for Selection of Study Area and Sources of Data:

This study was conducted in the Udaipur district of Rajasthan. According to the census of India 2011, the state of Rajasthan is ranked 25<sup>th</sup> among the 32 states in terms of literacy level, and the district of Udaipur stood at 25<sup>th</sup> position out of the total 33 districts in Rajasthan. Therefore, this specific region was important to be analysed and was selected to conduct the field

research in three different areas: urban, Semi urban and rural of Udaipur district.

**Table-1**

**Enrolment and out of school children % of 6-14 years**

Location	Govt school	Private school	Other school	Out of school
All India	67	26	2	5
Rajasthan state	58	34	1	7
Udaipur District	64	19	1	6

Source Annual Status of Education Report (ASER) 2011

The table 1 shows the enrolment and out of school children's status in 2011 in India, Rajasthan and study area Udaipur; accordingly 5 percent children in India were out of school, whereas 67% children in the country were in public schools and 26% attending private schools; whereas in Udaipur only 19% children were attending privates school and 6% children were not attending school.

**Sample Size:** 11 private schools were selected out of the list of 730 schools which were registered with District Education Department under either Society registration act 1860 or Trust act 1950. It was only 1.5 % of total number of private schools of Udaipur District.

**Table-2**

**Total private schools and visited schools in Udaipur District**

Areas	Numbers of (recognized) schools	%	Visited schools
Urban- Udaipur City	206	54	7
Semi-Urban (Blocks)	130	18	2
Rural (Villages)	394	28	2
Total	730	100	11

Source List Provided from District Elementary Education office, Udaipur

**Methods of Data Collection:** Schools were located in urban area (District), semi-urban (Block level) and rural villages, therefore, 7 schools from Urban, and 2 each from Semi-Urban and Rural areas were selected to study the implementation of Clause 12 of RtE. Interviewed of 11 private school authorities, conducted one focus group discussion with rural parents and 4 interviews with parents from other areas, also interviewed local elected Panchayat (Village Council) member in one village and Block level education officer.

Furthermore, visits were made to the department of elementary education at district and block levels in order to get the necessary information and permission for visiting private schools.

Focus Group Discussion was conducted with 12 rural parents and elected members of local Government. The discussion was

focussed on awareness of parents and Panchayati Raj Institutions (Local Government- Gram Panchayat) about the Clause 12 of RtE.

In addition, primary information was collected from Education Department like list of private schools, list of admitted children under RtE Clause 12, copies of official records, copies of records from private schools visited, published news relating to RtE Clause 12 from local newspapers all of which helped in order to understand implementation of the Clause 12 of the RtE.

Census of India, reports published by education department and academic literatures to support my arguments were also used.

**Result and Discussions**

The following section presents the findings on each sub-questions of the research which will seek to answer to the main research question.

**To what extent and how are schools complying with the provision of RtE Clause 12:** As per the Clause 12, selection of children will be based on lottery; school has to invite parents and government education authority on the day of selection of children from disadvantaged group. The Director of the school also told that there is a problem with lottery system of admission. For example if there are two children who came for admission- one child from very poor economic status (family annual income less than one lac) and the other from a family with slightly better economic status (almost 2.4 Lac which is the maximum limit for free admission), then in lottery system, there is equal opportunity of getting admission for comparatively high income child. In such instances, school cannot give admission to the child from lower economic status. As the Director shared, the school authorities have to face resistance from poor parents many a times.

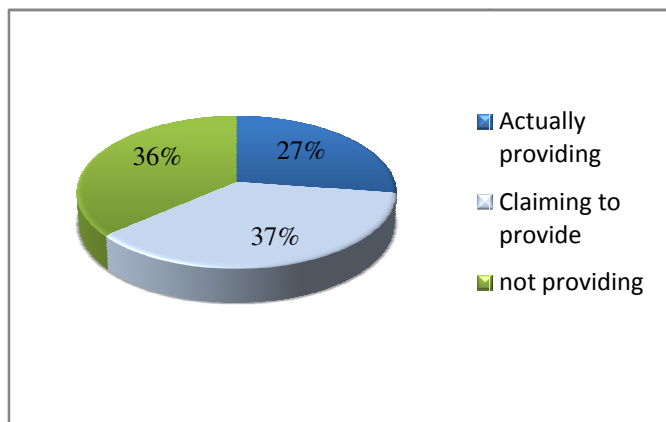
The private school authorities also shared that the government authorities have not provided clear guidelines for admission process except verbal instruction regarding provision of 25% admissions to disadvantaged children during one meeting which was organised in January 2012.

After visiting schools of rural, urban and semi-urban areas in Udaipur district of Rajasthan State, India different peculiarities were found in the application of this norm that will be explained in the following paragraphs.

The findings in the different schools of rural, urban and semi-urban areas that were visited revealed some interesting answers.

Out of eleven schools visited, only 3 (27%) were providing free admission more or less according to the law of the Right of Children to Free and Compulsory Education. These schools post information regarding admission on their notice boards and provide application forms to all parents of deprived sections

who ask for admission. Afterwards the parents are required to submit the forms with the required documents like: caste certificate, income certificate and birth certificate of the child. The caste certificate is only mandatory for the SC, ST and OBC groups. The schools select the children following a lottery system that assures the equal participation of all the applications received and is done in front of the parents and education authorities.



**Figure-1**  
**Schools Admission Status under RtE**

The list of the selected children is later published on the notice-board. Although the Act 2009 says that the school has to advertise several things in local newspapers such as the quota of the institution (number of seats available for class 1<sup>st</sup>) and the key dates in the admission process such as deadline for the submission of application form and the date of lottery, these schools are not fulfilling this requirement making it difficult for the community to know about their right to education. Though the government authorities should be present on each selection process, only one of the four schools visited had the participation of the representatives. Regarding the lottery system the Rajasthan Patrika, a vernacular newspaper of Udaipur, has published on 21<sup>st</sup> January 2012 that the parents and government authorities are invited to be present on all schools of Udaipur district, even though the authorities were not present in all the cases.

Meanwhile 4 (37%) schools claim to provide the admission, nevertheless in reality they are avoiding to apply the norm as it is written but they are making an interpretation of it by using other methods of admission like it will be described in the next paragraphs. Finally there are 36% schools that are directly accepting to not implementing the RtE Clause. It's interesting to understand how all the schools don't feel compelled to meet the terms of the act.

In the urban areas out of seven schools visited, three are providing admission according to the RtE Clause 12 while two are claiming of admission but have used other methods and two are directly not giving admission. In the field observation it was

observed that: all three schools are charging transportation fee, stationary and uniform fee, which according to above mentioned clause is not legal. Moreover wealthier families' children frequently get admission in the quota of disadvantaged and weaker section.

The street-level bureaucracy theory shows bureaucrats use discretion to formulate rules and interpret policy, 'lower level worker high degree of discretion in determining the nature, amount and quality of benefits and sanctions provided by their agencies' whom to provide service and whom not? <sup>6</sup>. Private schools interpretate and created deferent methods for admission under RtE clause 12. High level or discrimination has been identified in urban schools where they use different methods according to their convenience, and manipulate the admission criteria. The schools are charging extra fee to burden middle class families, disadvantaged and weaker families to create barriers in admission process. This provision has limited access to quality education among middle class, weaker and disadvantaged.

**Discrimination and Segregation:** At the same time, the admitted children in one of these schools are segregated from the morning assembly and the class room sitting arrangement. This information was highlighted by a local newspaper 'Rajasthan Patrika' page 3 dated on 30<sup>th</sup> July 2012 and was also reported by parents during the interviews done with them.

#### A Case of Discrimination in Private school

A representative from NGO shared a practical experience about one reputed private school from Jaipur Rajasthan where his son is studying. He went to attend the parent's teachers meeting, during the meeting teachers and school authorities tried to communicate to upper class parent that 'we have segregated disadvantaged children from normal classes and our regular teachers are not teaching them. We have arranged separate teachers for them. We are trying to keep them separate so that your children will be safe from them. They will not learn anything bad from those children who are coming from poor background.' The discussion was about explanation that ensured to upper class parents that they are always cared about their status in the society and that teaching was better to their children in isolation from disadvantaged children. Parents don't have to worry about their children education, school authority, teachers taking care of their interest. He also asked teacher about whether their parents too were here in the meeting. They were told that they don't invite them here, sometime they come but they meet with other teachers which we arranged for them.

There was also one similar case highlighted by a National news paper 'The Hindu' in Bangalore 18<sup>th</sup> July 2012. It says that in a well known school, 'Nandini Layout', for the children of the

group of RtE admission's hair was cut by a school teacher for identification. At the same time the children were kept apart from the morning assembly and had to stand separately from the rest of the children and their names were not entered in the attendance register. Additionally, the children were asked to sit in back benches in the classroom and their lunch boxes were checked before entering in their class to assure the good quality of food according to the status of the school are brought or not.

As per the principle of availability and accessibility, education should be available for all without discrimination but with a special focus on disadvantaged children. Policy provision is also clear that private schools have to provide admission and treat everybody equally as normal children without discrimination. However, in day to day practice segregation is occurring following the traditional caste system. The lower class and caste students are separated from higher class and caste students. This resembles those front-line workers (education officers and private school authorities) who use discretion shaped social environment.

**Free Admission for disadvantaged or concession for Privileged:** The second group (schools claiming to provide the admission) used different methods to avoid the compliance of the law: like giving concession to one child only if their siblings were studying in the same school, so that a family would have to have at least three children to get the possibility of free admission for one of them.

With the exception of one school: 'Eden International' - which provided real admission according to RtE Clause 12 - the process of admission was almost the same in all the schools. Schools exempt from fee only to those children whose other two siblings are studying in the same school. (It means not free admission as required by the Clause 12, but in fact a 33% discount in the three children admitted from the same family). This is the usual practice in private schools that do not charge tuition fee of one child if their siblings are studying in upper class in same school and these schools submit to the education department the list of such children discounted in order to get rid from obligation of RtE, and so they claim for reimbursement of expenses from government for each of this children falsely 'free admitted'.

In contrast in the visited rural area's Low Budget Schools, researcher found that if the institution is giving free admission to disadvantaged children it would be virtually impossible to define 'disadvantaged' because almost all the population is below the poverty line. Rural parents think that without paying fee, school will not give sufficient attention to their children and therefore they want to pay. At the same time all these schools are in fact not charging a high fee so that every poor parent could afford their children's education. Nevertheless, according to some principals and parents this education's policy is not helping them, because they can afford a low fee but if they want to send their children for a good quality school in semi-urban or

urban area then they cannot bear the other additional costs like transportation, uniforms and stationery.

In the third group (schools accepting not having implemented the RtE Clause) out of four schools, 2 are High Budget institutions with high fees for their students (about 25 Euros per month, per child). Well known national and international schools are apparently not forced to comply with the RtE Clause due to a specification on the law that says that minority registered schools are not obligated to cope with this law described in chapter 3.. Thus, other schools like the ones registered under Christian minority category (which by law are handled as minority schools) have no obligation to follow the RtE clause 12. In these schools the fee is around 100 Euros per month per child. A minority school serves to upper caste elites rather than poor minority children, which was found in one of the sampled minority school. Policy need to be redefined as per the guided principles of Rights-based approach; availability and accessibility. Both were ignored while designing policy or closely monitoring needed from street-level bureaucrats on minority school. Here policy makers and action of these front-line workers were seen to reflection of social and political environment.

In Semi-urban and rural areas, medium budget schools reported that no authority has requested them to comply with the requirement for admission under the RtE Clause 12 and therefore they didn't provide such access to deprived groups. Deprived groups belong to ST, SC and OBC castes and other below the poverty line (BPL) groups whose income of the family is less than 4.000 Euro (240000 Indian Rupee) a year. In some cases school authorities have issued some forms for admission but none of them had been resubmitted to schools. It seems that in semi-urban and rural areas parents are not so aware about the RtE Clause 12, therefore they are not demanding for free admission. During the focus group discussion most of rural parents informed that they were not aware of their right to seek admission in to private school under RtE Clause 12. In these areas street-level bureaucrat's actions were absent. As theory of street level bureaucracy tells, bureaucrats works with limited resources where they use discretion to provide service where citizens strongly demands. In rural and semi-urban areas people were not aware about RtE Clause 12 therefore, people were not demanding for free admission. officers and school administration concern to provide benefit to targeted children

**Role of local authorities and public servants in implementation of RtE:** It was observed that District and Block level education officers were having less monitoring staff with less physical resources like computers, internet, vehicle for field visit, documentation officers etc. They were more politically influenced as one of private school director told that one of the parents of disadvantaged children was seeking admission for his child under Clause 12 but his application was rejected. When this parent did complain to education officer, the

officer couldn't do anything because this school was partially owned by a political leader of the locality. This shows that these bureaucrats work under political pressure. This relates to theory of street-level bureaucracy, which explains these officers work directly with citizens with lack of resources and under political pressure which influences their service delivery and distribution of resources.

District Elementary Education Officer Mr Mandowara expressed that Clause 12 was good but it is very difficult to say that it would really provide equal opportunity to poor children because of inability to change the perception of private schools authorities about discrimination and segregation. He said that caste discrimination exists in society; and that we cannot overlook the fact that there is huge gap between upper and lower caste or lower and upper strata. How could we as officers ensure that private schools follow RtE rule to implement Clause 12 if they are not accepting it from heart (mean-willing) to provide admission rather than find ways to escape from obligation. It was impossible for him to monitor all schools because he had lots of work relating to public schools and this was an additional responsibility without additional man power and resources.

He received several complaints from parents about private schools that they denied to provide admission or charging fee etc everyday but he couldn't solve all problems. These many problems came to notice because people are more aware in urban areas but he didn't receive complaint from rural parents because they were not aware about it. Schools have claimed for reimbursement but without verification whether they have admitted children from disadvantaged community, it was not possible for him to reimburse. He was not able to verify all schools with limited officers. He said that they have developed mechanism involving Nodal School teacher to verify village level private schools. Street-level bureaucracy theory, when government implements new policy with existing monitoring setup where bureaucrats use discretion and find the way of implementation. In this instance, it is found that DEEO has decided to verify through mechanism of Nodal School.

Interesting things from education officers at district and block level was lack of clarity on RtE. District Incharge of RtE Clause 12 implementation, told that they were gathering information about number of private schools and those that provided admission but could not do anything if they didn't provide this information. When asked about reimbursement of claims, she told that they were not very clear about many issues related to this Clause 12, and also did not have proper guideline on these issues.

All the above mentioned information show that the district and block level education officers are not effectively involved in implementation of RtE clause 12, and that without clear information it is impossible for them to monitor the advances and the difficulties in the implementation of the Clause. Limited

resources could be the constraint for poor implementation of the Clause 12.

**Perceptions of Upper and Lower Caste Parents on RtE Clause 12: Urban area's parents:** In Udaipur, discussions were made with four parents from the upper class (unfortunately none from the disadvantaged group) about the clause 12. In their opinion, providing free admission would not actually help to improve the conditions of the poor children because they are unable to compete with upper class children whose educated parents support at home with their assignments, while most of the poor parents are uneducated or have very low education to support their children in academics. Furthermore, the interviewees feared that children from wealthier families are exposed to learning bad habits from the disadvantaged children; for example, using abusive language, fighting with other family members, stealing things from others, etc. They consider that disadvantaged children live mostly in slums and that in these localities such behaviours are frequent among the communities. Finally for them government has to strengthen public schools rather than providing admission in private institutions, so that they can learn better but stay put in their locality. Author Weiner has mentioned in his study on child labour in India that belief of the upper class community about education poor disadvantaged strata has seen excessive and inappropriate. Upper class rejected compulsory education policy arguing that education will not prepare poor children for work and they have to work rather than prepare for white-collar or service.

**Rural area's parents:** Focus Group Discussion with 12 rural parents from the deprived section was conducted, about the implementation of the RtE clause 12. When I asked about their opinion about the provision of RtE, it was found that none of them were aware about it. When explained and asked about their points of view, they were highly interested to have the opportunity to send their children to private schools, but they are not able to do so because most of the villages don't have private schools in nearby location and sending the children to nearby semi-urban areas would mean high cost of transportation and many other additional costs.. Other important consideration was that admission was provided only from class 1<sup>st</sup>, so it was difficult to send the younger children to far-off places; if the schools would provide admission in upper classes (class 2-3 and onwards), the parents could then send their children as they would be slightly older in age.

## Conclusions

The Principle of Rights- based Approach, availability guided education should be available for all without discrimination where parents has option to choice school from their children. But rural parent have no choice to select good quality education because most of quality education centred in urban areas they are bound to send their children either public or low budget private schools, both know for poor quality. Similarly, in urban area, education institutes provided free admission but additional

cost like transport, uniform, and stationeries allowed economically privileged strata to get access.

Street-level Bureaucrats (District Level Education Officers) were found more active in implementation of RtE clause 12 in urban area where community and media were more educated whereas in rural area community and elected member of (Panchayati Raj Institution) local government were not aware about such provision of the Clause 12 of RtE. It shows that these bureaucrats provides/ allocates resources where people strongly demand. People from rural area were not active therefore, Government officers and private school authorities not concern on admission of disadvantaged children. It has also found that street-level bureaucrat's works with lack of resources therefore they were unable to reach most of the areas. Lack of updated list of schools and children were shows their limited capability to manage.

Private schools used various methods to escape form obligation of clause 12 for example- free admission to children of disadvantaged groups but charging money for huge additional expenses which are not in the preview of clause 12 Nevertheless, poor parents are also not much aware of such a Clause and few of them manage to bear the expenses. Thus, though clause 12 intends to benefit poor and disadvantaged children, remain as a clause in papers reaching to a very limited number of children. The documents required as proof of poverty for the children to get admission in private schools include certification of below poverty line /income certificates of parents from government authorities, which again is limited to the parents who either have political connections or have ability to pay to the government authorities. In rural areas, low budget schools are charging fee from parents arguing that parents are willing to pay; however, the schools are still claiming the reimbursement from government under clause 12.

If poor parents can still afford to pay for education their children they are willing to send to the school education of their children in such schools as the fees are quite low, however the quality of education in such schools still remains a big question.

The schools seem taking benefit of parent's ignorance about the provision by charging fee to students from weaker and disadvantaged class.

The private schools in urban areas have much better quality of education as compared to these rural private schools, but these urban schools are not affordable for the poor parents due to their very high cost of education. Minority schools were exempted from obligation of RtE clause 12, assuming that these schools are already for minority children who are disadvantaged, but one can see that most of these schools are providing education to children from higher strata of the society. These schools are popular for high standards and quality services. When one looks at the parent's perspectives regarding Clause 12 of RtE Act, parents from upper and lower strata have very different views

regarding this clause Parents with better economic status are of the view that disadvantaged/poor children even if given opportunities for education free of cost in private schools, they would not be able to cope up with the environment of these private schools as they are from a very different social environment from that of the urban economically privileged children.

Parents who are from low economic status are mostly not aware about the RtE Act and do not have access rather experience of quality education due to constraints in availability and accessibility. Some extent it true that these children were lacking behind from study and felt isolated. This aspect this policy is not helping such target groups. How government will deal with discriminatory perceptions of upper caste community and school authorities which can accept such children. It is very hard to say. The government can involve civil society organisation for close monitoring and assigned special officers at block, and district level for effective implementation.

Discrimination found in the study area where school segregated disadvantaged children in schools. This need to address not only through RtE Clause, it has to deal with social awareness, strong provision against such institutions.

Findings of this study show that in the urban area, three High Budget Schools have provided free admission to children from disadvantaged and weaker section where parents have to manage the cost of transportation, stationeries and uniform for their children. According to Director of one school and Principal of another school, their parents are able to bear these expenses implies that they are not supposed to be in disadvantaged category, but schools has to provide admission to these children parents fulfilled the requirements of admission like the certificate/document proof of disadvantaged category. In such case this policy is not for disadvantaged children, it only accessible for privileged people. If government can bear all the expenses of children including transportation, stationeries, uniform etc then it will be more effective for such disadvantaged children.

Street-level bureaucracy theory was useful for uncovered the facts behind implementation for example, government officers use the discretion for provide benefit to privileged section in urban areas, less focused in rural area, demand from educationally advanced parents from urban area, rural community were aware therefore they were bound to send children in public schools of low budget schools where they were paying fee. Also the principle of Right Based Approach found that policy meant for privileged not for disadvantaged for example definition of weaker section included all community (upper and lower caste) only deferent is whose family income is less then below poverty line. Therefore upper caste parents presented certificate and other required documents for admission whereas poor were either in rural area where

availability problem or in urban area where they have access problem due to manage the document for admission.

**Policy Recommendations:** Availability- Education institution in rural area, currently, only poor quality public schools or low budget schools available for 80% of total population, government should provide

residential school facility for poor children from rural areas in good quality urban educational institutions or improve public school by giving management to NGOs or private sector which can provide quality as compared to urban high budget schools. In economic market urban English medium schools were more successful.

Redefining the definition of “weaker section” under sub section e of section 2 of RtE 2009, currently includes all economically poor therefore most of benefits are availed by educationally aware and politically connected parents who are able to manage certificates to meet admission requirements.

Defining entry class for admission under clause 12, most of high budget schools/quality schools provided limited admission by creating new entry- level (pre-nursery) grade. Such limited number of admission will not be able to bridge the gap of social inequality.

25% reservation is not enough to accommodate most of poor children. It should be 50% as initially ministry of Law has recommended.

Obtaining Certificates for “Below Poverty line” and “income” certificate are difficult and require political connections. It should be made accessible for all especially rural community at village level. Currently they have to go to Block level government office which is quite far and expensive for really poor.

Reimbursement process- needs to be strengthened in terms of verification of enrolled children by visiting schools, parents. Process should be made more efficient that private school can

receive claims quickly. Additional charges should be borne by the government for example; transportation, stationeries and uniform so that poor parents can get access to such high budget schools.

Monitoring/ verification- government has to develop separate body for monitoring implementation of clause 12 at district, block and village level for example; government can give responsibility to NGOs and social activists for monitoring at school level implementation and Block level as well as at district level. They can closely look into the matter relating to discrimination, admission process, classroom teaching, and community awareness. Awareness programs.

Discrimination- Strict monitoring and policy provision need to penalise such schools.

Street-level bureaucrat’s priority- The government has to give special emphasis on clause 12 by providing training to responsible officers, providing more resources for monitoring in order to handle the discretion of bureaucrats and to lay down more standard strategies for implementation.

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