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# Impact Of Covid 19 On Right To E – Education: A Critical Analysis

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## Abstract

Education is the foundation for all human beings. Only after several decades, Education was made available as a fundamental right to citizens of India. Fundamental right to education faced several challenges, when educational institutions were closed for longer span. The focal point of this Article is to throw some light on constitutional and human rights perspective of particular group of young generations relating to their deprivation of getting education during and in the aftermath of this pandemic. Secondly, an attempt is made through this paper to point out some Indian legislative frameworks that can be termed as inefficient to cope up such unprecedented situation in India. In a nutshell, this Article provides an overview of Constitutional and Human Rights concerns of children who have been depriving from certain benefits regarding their right to education, specifically their poor or non-access of ICTs, since the outbreak of this pandemic and the author has analysed the importance of right to education in the perspective of the Constitution of India.

## Introduction

COVID 19 is the deadly pandemic which is basically health related and affects not only right to health but gradually day by day it has destroyed right to education and the systematic pattern of all other rights. So, undoubtedly it is a global issue. The whole world is going through a terrible and unprecedented time. The pre-planned scheme of nation states has been broken by the disastrous nature of Covid 19. It exposed the broken system of various nations continuously. Education is the important pillar which forms the structure of the society. The functioning of the entire world was confined to technology during lockdown. The notable point is education undergoes a technological transition during pandemic situation.

Education sector has a huge impact in its normal functioning mechanism. With the outbreak of this epidemic which has been rightly termed as 'Pandemic' each and all activities of human race are in a mode of captivity. As the lives of the people of the entire world was confined to houses, education is the worst affected human right which resulted in dysfunction of the day-to-day activity. As a consequence of pandemic education was in the lockdown mode. It is a necessity for all the educational institutions to remain shut down. Undoubtedly, all the policy makers are in unanimity regarding the closure of all educational institutions for the sake of saving the lives of our future generations. Major disruption and severe interruption are caused to the education sector. Most of the

countries have adapted the plan to shut down all the educational institutions. The situation does not end here.

The policy framers of education sectors now a days are facing so many difficulties regarding the issue that whether it will be fair enough to reopen the educational institutions with strict safety measures as well as social distancing theory or to continue the education system by adapting other suitable means. So, from a holistic perspective the entire education system is suffering from an unprecedented crisis. And at the same time those who are the beneficiaries of this education system are also suffering from restlessness and uncertainty. Naturally, it creates massive hindrances in the path of social life and the process of learning. Therefore, it will never be an over statement to state that this pandemic creates a serious breakdown in education sector.

### **Pandemic and the Indian Education System**

Due to the outbreak of this pandemic, without any kind of choice, people are forced to shift their preferences of adopting technology in their day-to-day life towards the necessity of accepting it. In many countries educational institutions are reviving its rhythm by using several technical means. Teaching and learning, which are the two basic ingredients of education system, both are moving on virtual platform. To ensure the inspirational guidelines of UNESCO many educational institutions across the globe are recommended to adopt a variety of hi-tech, low-tech and no-tech solutions to assure the continuity of teaching and learning process.

Unfortunately, this formula cannot be applied in a straight manner in India where one third of its population is still under the starvation. Broadly speaking, smart phones, laptops or computers are still a luxury for most of the households in India. According to the report of MHRD not more than 8% of the Indian students have the access over internet. With the purpose to align with the problem, many initiatives have been taken by Union Government, such as RMSA (ICT based education), NROER, EPathshala, DIKSHA platform etc. However, it is pathetic to mention that not all communities, institutions or students and their families have adequate internet access due to their economic as well as technological incapacity. Apart from these, many students or teaching faculties live in places with frequent govt.-led internet shutdowns. Nevertheless, they are not habituated with internet and they are still deprived in this regard due to their ignorance as well as economic backwardness. In India Government schools face a huge gap in accessing high quality learning facility and digital infrastructure. It will never be a hyperbolic statement that in many backward and underdeveloped areas of India, students join their schools only because of getting midday meal. A 'meal' can be described as the only nexus between those students and their education. Therefore, two pictures stand side by side. While one segment of educational institutions specially the private institutions have already executed or yet to execute some substitutive mechanism to start their teaching-learning process, just on the very contrary, another sector of educational institutions having no other alternative to resume the process of learning are still in a mode of pause due to their

backwardness in every sense. So, if a student is deprived of getting education for any reason, it is a harsh human rights violation against him or her.

Moreover, the human rights violation will be in two folds. Firstly, the student's right to education is shattered and secondly the right of equality is infringed. More specifically, some private educational institutions are providing the education only because of the fact that they have good infrastructure, financial capability and most importantly, the students of such institutions have the broad shoulder to bear all the expenses of having stable internet connection, electronic gazettes. So, it can be described as a stroke of hammer to the sense of equality to the poor students.

### **Right to Education – As a Basic Human Right**

'Right to Education' is recognised as one of the basic human right. Various International Organisations have taken initiatives to implement this kind of right from the perspective of human rights. Specifically, one provision of UDHR (Universal Declaration of Human Rights, 1948) states:

"Everyone has a right to education. Education shall be free at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms.<sup>1</sup> It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further activities of the United Nations for the maintenance of peace. Parents have a prior right to choose the kind of education that shall be given to their children."<sup>2</sup>

The International Covenant on Economic, Social and Cultural Rights, 1966 reiterate the principle of Right to Education.<sup>3</sup> As per this Covenant, right to education includes right to free, compulsory and primary education for all. For the children who have not completed primary education, this right also includes the responsibility to provide basic education. To set a minimum standard and to improve overall quality, this right encompasses the responsibility to eradicate discrimination of any kind at all levels of education system.

The Protocol of European Convention on Human Rights,<sup>4</sup> UNESCO Convention against discrimination in education, Convention of the elimination of all forms of discrimination against women, Convention on the Rights of Persons with Disabilities, African Charter on Human Rights, Declaration of the Rights of Child 1959, Convention on the Rights of the Child 1989 contains provisions related to Right to Education. The World

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<sup>1</sup> Baxi, Upendra. The Future of Human Rights, New Delhi, Oxford University Press India 2012.

<sup>2</sup> Article 26 of Universal Declaration of Human Rights.

<sup>3</sup> Article 13 and Article 14 of Universal Declaration of Human Rights.

<sup>4</sup> Article 2.

Declaration on Education for All was adopted in 1909. Two other conventions of International Labour Organisation also lay the importance of right to education.<sup>5</sup>

### **Judicial Approach on Right to Education**

At the time of enforcement of the Constitution, right to education was not a fundamental right. It was a Directive Principle of State Policy.<sup>6</sup> Article 45 is a supplementary to several Directive Principles in the Indian Constitution.<sup>7</sup> Apart from these, the State shall promote with special care the educational economic interests of the weaker sections of the people.<sup>8</sup> In the year 1992, the Supreme Court stated the importance of Right to Education under Article 21 of the Indian Constitution.<sup>9</sup> In a landmark judgement of Unnikrishnan, J.P v. State of Andhra Pradesh,<sup>10</sup> Hon'ble Supreme Court of India has held that fundamental rights and directive principles of state policies are complementary and supplementary to each other. It was also held that right to education is included under Article 21.<sup>11</sup>

The court stated that Right to Education as an important fundamental right and the term 'life' includes 'education' because education promotes dignified life.<sup>12</sup>

### **Legislative Response on Right to Education**

Subsequently to the landmark decisions of the Supreme Court on right to education, Article 21 A was inserted as a fundamental right<sup>13</sup> in the Constitution, by means of an Amendment<sup>14</sup> by the Parliament. Right of Children to Free and Compulsory Act, 2009 was the consequential legislation framed by the parliament by invoking Article 21A.<sup>15</sup> The Act came into effect from April 1, 2010.<sup>16</sup>

### **Constitutional Approach - Correlative Duty to Fundamental Right**

The Right of Children to Free and Compulsory Education under Article 21 A was strengthened by inserting Article 51 A(k)<sup>17</sup> as a fundamental duty<sup>18</sup> under Part IV A of the Indian Constitution. The clause states that who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.

### **Salient Features of The Right to Education Act, 2009**

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<sup>5</sup> International Labour Organization, Convention No.138 and 182.

<sup>6</sup> Article 45 of the Constitution of India.

<sup>7</sup> Article 24, Article 39(e) and 39 (f).

<sup>8</sup> Article 46 of the Constitution of India.

<sup>9</sup> Mohini Jain v. State of Karnataka (1992) 3 SCC 666.

<sup>10</sup> (1993) 1 SCC 645.

<sup>11</sup> Right to Life and Personal Liberty.

<sup>12</sup> Ashoka Kumar Thakur v. Union of India (2008) 6 SCC 1.

<sup>13</sup> Part III of the Indian Constitution.

<sup>14</sup> 86<sup>th</sup> Constitutional Amendment Act, 2002.

<sup>15</sup> ibid

<sup>16</sup> Basu, D. D. Introduction to the Constitution of India, Wadhwa Nagpur 2004.

<sup>17</sup> Supra note 15.

<sup>18</sup> "The state shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the state may, by law, determine".

The Right of Children to Free and Compulsory Education Act or Right to Education Act (RTE) is a legislation of Parliament of India enacted on 4th August 2009. A draft of the bill was prepared in the year 2005 very roughly. With the progress of time, the said draft of the bill came into being as an enactment in the year 2009. Primarily according to the opinion of the sub-committee of the Central Advisory Board of Education, the provision of compulsory education was one of the pre-requisites of that bill. It will never be a hyperbolic statement if anyone says that Right to Education Act, 2009 is an outcome of Article 21 A of the Indian Constitution. India became one of 135 nation states to make education a fundamental right.<sup>19</sup>This Act among other things provides for the right of every child who has attained the age of 6 years to be admitted in a neighbourhood school and to be provided free and compulsory education in such school. It is the responsibility of the state for making such arrangement available to such children. As a consequence of implementing this kind of legislation, all schools whether it is aided or state schools will now have to facilitate the concept of free and compulsory education and charging of any kind of capitation fees is now completely prohibited and the parents of children cannot be subjected to any kind of hindrances to get free and compulsory education for their children.<sup>20</sup> As it is already discussed that Art.51A (k) of the Indian Constitution already casts a fundamental duty upon parents to make available their children to such free and compulsory education.

The major and important provisions of Right to Education Act, 2009 are given bellow:

- Right to Free and Compulsory Education for children from the age group of 6 to 14 years;<sup>21</sup>
- This enactment promotes a friendly learning atmosphere for those children in the schools;<sup>22</sup>
- The provisions of RTE, 2009 at the same time prohibit any kind of physical as well as mental harassment of those children;<sup>23</sup>
- The focus of RTE is on the various norms related to better infrastructure, student teacher ratio, working days and hours of teaching and non-teaching staffs etc;<sup>24</sup>
- No child is liable to pay any charges for education under RTE, 2009;<sup>25</sup>
- Most importantly, the RTE, 2009 makes Union and State Govt. responsible to provide Free and Compulsory Education by providing financial and other resources;<sup>26</sup>
- No child shall be held back, expelled, or required to pass a board examination until completion of elementary education;<sup>27</sup>

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<sup>19</sup> Jain, M.P. Indian Constitutional Law, Wadhwa and Wadhwa Co. Nagpur 2007.

<sup>20</sup> Pandey, J.N. The Constitutional Law of India, Central Law Agency, Allahabad 2011.

<sup>21</sup> Section 3 of The Right of Children to Free and Compulsory Education Act, 2009.

<sup>22</sup> Section 29 (2) of The Right of Children to Free and Compulsory Education Act, 2009.

<sup>23</sup> Section 17 of The Right of Children to Free and Compulsory Education Act, 2009.

<sup>24</sup> Section 23,25,26 and 28 of The Right of Children to Free and Compulsory Education Act, 2009.

<sup>25</sup> Section 13 of The Right of Children to Free and Compulsory Education Act, 2009.

<sup>26</sup> Section 7 and 8 of The Right of Children to Free and Compulsory Education Act, 2009.

<sup>27</sup> Section 30 (1) of The Right of Children to Free and Compulsory Education Act, 2009.

- This RTE Act 2009 provides the rules regarding the transfer of any child from one school to another school;<sup>28</sup>
- This legislation chalks out the extent of school's responsibility for free and compulsory education;
- This legislation introduces the concept of establishing neighbourhood schools;<sup>29</sup>
- According to the provision of this enactment, it shall be the duty of every parent or guardian to admit or cause to be admitted his or her child or ward, as the case may be, to an elementary education in the neighbourhood school;<sup>30</sup>
- A child above six years of age has not been admitted in any school or though admitted, could not complete his or her elementary education, then, he or she shall be admitted in a class appropriate to his or her age; Provided that where a child is directly admitted in a class appropriate to his or her age, then, he or she shall, in order to be at par with others, have a right to receive special training, in such manner, and within such time limits, as may be prescribed: Provided further that a child so admitted to elementary education shall be entitled to free education till completion of elementary education even after fourteen years.<sup>31</sup>
- For the purposes of admission to elementary education the age of a child shall be determined on the basis of the birth certificate issued in accordance with the provisions of the Births, Deaths and Marriages Registration Act, 1886 or on the basis of other such document, as may be prescribed. No child shall be denied admission in a school for lack of age proof.<sup>32</sup>
- A child who completes elementary education shall be awarded a certificate;<sup>33</sup>
- It will apply to all of India except Jammu and Kashmir;<sup>34</sup>
- It provides for 25 percent reservation for economically disadvantaged communities for the admission to Class 1 in all private schools;<sup>35</sup>
- It mandates about the improvement of quality of education;
- School teachers will need adequate professional degree within five years or else will lose job;<sup>36</sup>
- School infrastructure (where there is problem) to be improved in three years, else recognition cancelled;<sup>37</sup>

The crux of the RTE Act, 2009 has been imbedded into the phrase of 'Free and Compulsory Education'. Free education means that no child, other than a child who has

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<sup>28</sup> Section 5 of The Right of Children to Free and Compulsory Education Act, 2009.

<sup>29</sup> Section 3 of The Right of Children to Free and Compulsory Education Act, 2009.

<sup>30</sup> Section 10 of The Right of Children to Free and Compulsory Education Act, 2009.

<sup>31</sup> Section 4 of The Right of Children to Free and Compulsory Education Act, 2009.

<sup>32</sup> Section 14 of The Right of Children to Free and Compulsory Education Act, 2009.

<sup>33</sup> Section 30 (2) of The Right of Children to Free and Compulsory Education Act, 2009.

<sup>34</sup> Section 1 of The Right of Children to Free and Compulsory Education Act, 2009.

<sup>35</sup> Section 12 (1) of The Right of Children to Free and Compulsory Education Act, 2009.

<sup>36</sup> Section 23 of The Right of Children to Free and Compulsory Education Act, 2009.

<sup>37</sup> Section 19 of The Right of Children to Free and Compulsory Education Act, 2009.

been admitted by his or her parents to a school, which is not supported by the appropriate Govt., shall be liable to pay any kind of fee, charges or expenses, which may prevent him or her from pursuing as well as completing elementary education. 'Compulsory Education' bestows an obligation or responsibility on the Appropriate Government as well as Local Authorities to provide and ensure admission, attendance and completion of elementary education by all children of the age group of 6-14 years. So, from the above two important phrases it is quite apparent that Government has to shoulder the burden of responsibility to spread literacy throughout India among a certain age group.

### **Conclusion and Suggestions**

According to the inspirational guidelines of UNESCO, every nation must frame and implement such educational policies to achieve every individual's right to education. It sounds really great but the ground reality is something different. In this untested and unprecedented critical juncture, education policies are rife with complications and difficult to implement, not only in India but also all over the world. Recently HRD ministry has announced a campaign in the context of India's response to Covid 19, to seek suggestions from teachers as well as students to make an improvement to the online strategy. Significant concerns are embedded with the unavailability or non-access to devices or internet connectivity, need for safe space of learning, making teachers and the families of the students capable to operate and navigate devices etc. India can develop more flexible and creative policies to ensure that all have sustainable access to their learning.

Time has come to reboot several Indian legislations to align with all unprecedented situations. Otherwise, it will be a great hurdle for the stakeholders to implement the right policy at the right time and at the right place. No measures are taken to cope up such pandemic or any odd situations through the existing legislation. More specifically, it can be mentioned that in the Right to Education Act 2009, Disaster Management Act 2005 or the Epidemic Diseases Act, 1897 no provisions find a mention, when children are deprived of their fundamental right and basic human right to education in crucial situations. It finally results in deprivation of right to education in the Constitutional perspective and Human Rights perspective. Elementary Education from the age of 6 to 14 years is of prime importance as mentioned in the RTE Act, 2009. However, no such strict remedy has been given under this enactment, when students are being detached from their learning environment for a long time due to pandemic and when disadvantaged students are strongly discriminated to get their right only because of their economic status during such situation.

It is high time to incorporate the phrase 'online education' within the broad purview of 'Free and Compulsory Education'. Perhaps the welcome venture to sustain meaningful learning to all, lies in the shoulders of Union and State Governments, in association with advanced Private or Government Aided institutions. Therefore, it is an important responsibility for the stakeholders to chalk out a legitimate framework to prevent human rights violations during pandemic. The time has come to recognize the Digital right as basic human right and the Government of India should incorporate this scheme of providing the right to access digital world to each and every citizen along with

the other schemes like 'Roti, Kapra aur Makan'. If education cannot be accessed by people at large, India will never be able to compete with other countries and the whole structure of society will be demolished very soon. To fulfil the requirements of welfare state and to make balance between the principles of socialistic pattern of our egalitarian society based upon the touch stone of Constitutional spirit, the process of learning must have been ensured. It will be appropriate to conclude this Article with this famous quote by G. K Chesterton:

"Education is simply the soul of the society as it passes from one generation to another."

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