

# 1. Evaluating ‘Right to Education’ In the Corona-Times: An Indian Perspective

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## **Abstract:**

Bhanu Pratap in his article deliberates, the term ‘we are all living in a same society’ is fallacious.<sup>1</sup>He makes a notion that the concept of “living in a society” or “membership of a society” entails different expression. The children from all of the age groups, although living in a territory of the country, may not necessarily be a part of the community. In special reference to the under-privileged section of the society, we are endorsing, the view “the right to education made available only for the privileged section of the society”.<sup>2</sup>In India, we often fail to dispense justice when their rights and interests are not reconciled effectively. It is in this background that I argue for promotion and development of education for underprivileged section of the society, where they in special reference to education under the Constitution of India. I intend to argue the fact that, Right to Education is available only for the privileged section of the society, and especially in the Covid pandemic, the under privileged section of the society, were not able to get their Right to education. Hence, the evaluation of Right to education in reference to Covid pandemic, becomes important for us to unpack.

**Keywords:** Right to Education, Coronavirus, Right to Life.

## **1.1 Introduction:**

In Janjgir-Champa district of Chhattisgarh, 5% of the ITM children drop out of the school owing to language barrier.<sup>3</sup> The rates of drop-out in schools have been extremely rampant. Dropout rate among the children in Chhattisgarh is in general high. In 2011, it was projected that approximately 1, 78,500 children were out of school.<sup>4</sup>The Nunavut Report argues that children inability to access education has far reaching consequences on their body and brains. It causes “physical harm” through tuberculosis, suicides, dying when trying to escape, stunted physical development because of insufficient nutrition, sexual abuse, harsh physical punishment, hard labour, etc. and even “mental harm” including deprivation of the development of high-level cognitive and linguistic capabilities and grave difficulties in intergenerational cultural and linguistic transfer of knowledge.<sup>5</sup> Despite the call from international covenants like, The Convention on the Rights of the Child (CRC) and several aspirational documents urging the State to make provisions for education along with a provision for accessing the language of the access to socio-educational-economic mobility, there is still less improvement for a downtrodden child in India. Many schools in India neglect the education of an ITM child triggering educational failure and illiteracy, contributing to loss of freedom, capability deprivation and poverty.<sup>6</sup> These covenants advocate for a possibility of a bilingual education along the lines of the four founding principles of the Child Rights Convention,<sup>7</sup> which operates on four guiding principles for a child.

- a. The Principle of Non-Discrimination (Article 2),
- b. The Principle of Right to Life, Survival and Development (Article 6).
- c. Respect for the Views of the child (Article 12).
- d. Best Interest of the Child (Article 18).

Exclusion of children from schools cause students to become “passive spectators” in the classroom<sup>8</sup> thereby denying them the component of equal educational opportunity and participation in the classrooms<sup>9</sup>. The component of “equality” of education is in the best interest of a child. If an ITM child is unable to study in his language, it may cause mental and physical harm and would discriminate in accessing education. As a result of which, there is a need to assess the various competing rationales, in relation to education of an ITM child. In seeking to remedy the situation, factors needs to be evaluated in the search of a new and progressive model for removing the eclipse of discrimination and accessing education for a child.

Educational research highlights the Matthew Effect<sup>10</sup> to be pronounced in primary and middle level schools where the research showed that when there is an interaction between three basic factors; educational background, learning practices and motivation, the ethnic and socioeconomic groups score higher than others in early grades also scored higher in later grades as well.<sup>11</sup>

The drop-out rate in the country in 2012 was 5.6% at the primary level and of 2.7% at the upper primary level.<sup>12</sup> In the state of Chhattisgarh, the dropout rate at the primary level was reported to be 3.1 percent and that at the upper primary level was reported to be 3.7%.<sup>13</sup> This just reiterates the divide in the Educational opportunity and contributes in Matthew’s effect and causing harm to a child.

Port Loius in his article<sup>14</sup> submits the phenomenon of suppression of education, called “Harm Principle”; causes harm not only to the children but also the society and aggravates poverty.<sup>15</sup> An education based on the assimilation of the language of an ITM child has caused “long-lasting mental harm, including deprivation of the development of high-level cognitive and linguistic capabilities and grave difficulties in intergenerational cultural and linguistic transfer of knowledge<sup>16</sup>” and even physical harm.

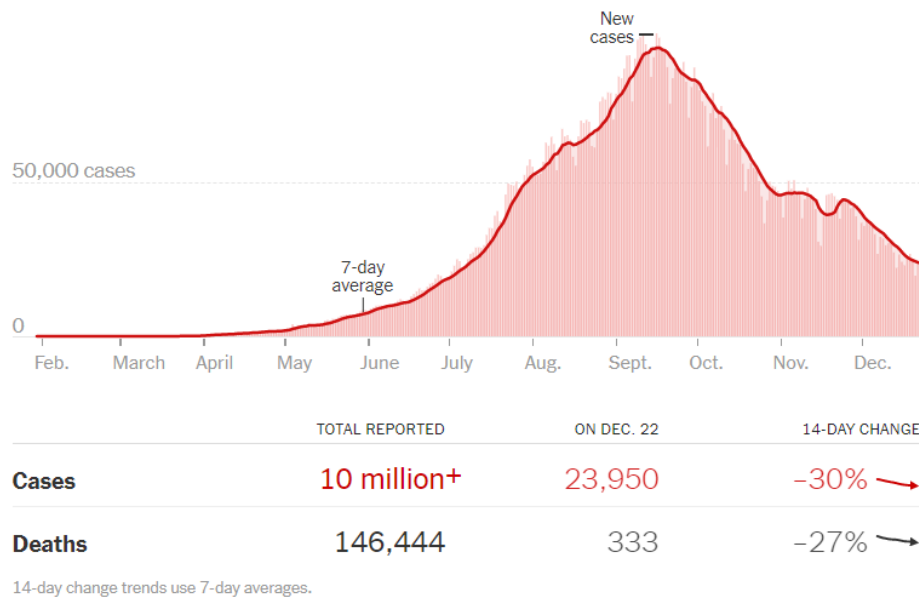
When a child is discriminated on the basis of education, it gives rise to difference aware equality<sup>17</sup>, where an educational provision is made which favours the children who are able to afford the education. This just reiterates the divide in the Educational opportunity and contributes in Matthew’s effect and causing harm to a child.

## **1.2 The ‘Lost Year’: The Case of Education in Reference to India:**

India, accounted for 10 million cases of Coronavirus. The New York Times Reports that there were around 1, 46,444 deaths related to Covid in India<sup>18</sup>. After 13 months of its discovery, the fight against coronavirus is not yet over.

There are problems strumming with reference to labour laws, employment, education, healthcare etc. The WHO has rightly pointed out that the outbreak of Covid is nothing more than a pandemic<sup>19</sup>.

Updated December 23, 2020, 8:21 P.M. E.T.



**Image 1.1: Data and Figures Relating to Coronavirus Outbreak in India**

India, being one of the most affected countries relating to Covid, is at a standstill. The reasons for this is there was a huge impact of the virus on the education sector as well.

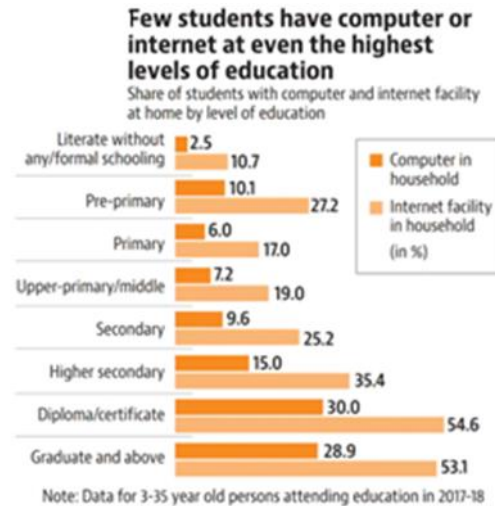
This paper is an attempt to glance at the problems associated with the outbreak of virus on the education sector. It will attempt to clarify few things with reference to International conventions and case laws.

More than 100 million individuals could have reached absolute poverty, according to an assessment by Brookings. India's GDP is expected to fall by over 10 percent in the current year (the latest estimate is 7-8 percent).<sup>20</sup>

This has contributed to job reductions and growing joblessness. Most firms have agreed to cut salaries for their workers. It has been estimated that approximately six million students are all out of school in India.<sup>21</sup>

### 1.3 Problem with Online Learning in India:

Also, at the best of circumstances, our learning environment has never been very successful. The pandemic of COVID-19 has made it highly distorted and defective. Online education is the primary point in offering educational process when schools are closed. In this entire online education effort, there are three relevant issues and frameworks that require serious consideration. One, an exacerbation of inequality; two, the educational problems that contribute to low quality education; and three, an unjustified fixation on digital education, post-COVID-19.<sup>22</sup>



A disparity in information technologies also has produced a shortage of connection to the Web and smartphones. In the 5-35 age category, as many as 76% of Indian students were unaware of using a computer. The proportion of those who didn't know how to use the internet was 74.5%.<sup>23</sup> (Image 2: Shows the number of students who have computer and internet facility in household)<sup>24</sup>

Focusing on the shortcomings in the process, the present situation has centered mostly on shortage of educational attainment for everyone, the lack of inclusive education, the shortage of trained teachers and a poor emphasis on basic life skills.

Professional courses are perfectly suited to a change to online approaches, considering the interplay between social history and selection of programs. 54% of participants in the humanities (graduate level or higher, including diplomas) did not really have internet connectivity and 81percent did not really have internet access.<sup>25</sup>

#### 1.4 Legal Framework:

The Convention on the Rights of the child is an important piece of international document which in its preamble recognizes the inherent dignity and of the equal and inalienable rights of all members. It also recognizes the rights of the children “for his/her full and harmonious development of his or her personality”.<sup>26</sup> The child according to the Convention should “be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity”.<sup>27</sup> The Convention also recognizes that the children with physical and mental immaturity should be given special needs and safeguards, including proper legal protection by the State.

The definition of child as mentioned in the Convention on the Rights of the Child, is a person below the age of 18 years of age<sup>28</sup> or the age of majority as defined in the legislation of a country. The Indian legislation with this regard has different meaning adjudicated to definition of child and hence different legislations have prescribed different age for the meaning and definition of child. In spite of various definitions defined in various legislations, there is no uniformity in defining the age of a child in any of the legislations.

For the purpose of understanding and definition age with regard to Education, the age of the child protected under Article 21A is between the ages of 6 to 14 years of age. The Right to free and compulsory education act protects the rights of the children between the ages of 6 to 14 years of age.

The Indian Majority Act, 1875<sup>29</sup> was enacted basically to bring about uniformity in the applicability of laws to person of different religions. It provides, unless a particular personal law specifies otherwise, every person domiciled in India is deemed to have attained majority upon completion of eighteen years of age. But in case of a minor for whose person or property or for both, a guardian has been appointed or declared by any Court of Justice the majority may be attained before the age of eighteen years. It is also submitted that 'minor' and a 'child' are to be interpreted differently as according to the facts of the case.

The convention under Article 2 states a duty on the States regarding the protection of the rights of the child without any discrimination with irrespective of "the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status".<sup>30</sup>

The convention brings in its ambit how the protection for the children with regard to the Right of freedom of expression should be undertaken. Under Article 13, "the right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice".<sup>31</sup> The right is not absolute and has negative covenants attached to it when it is for the protection of the rights and reputation of others or in the interest of national security, public order, or public health or public morals.

Article 23 enshrines a duty on the State parties to recognize that a child, mentally or physically disabled should enjoy a full and decent life which ensures his or her dignity, promote self-reliance and which would facilitate the child's active participation in the community.

The states parties recognize that the right of the disabled child is to ensure special care and encourage and ensure the protection, available to the resources and to provide for assistance for the child's condition. The article also strives to provide such an education, free of charge, whenever possible while looking at the financial aspect of the child's parents or others who is taking care of the child and shall ensure that the disabled child has the effective access to and "receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development."<sup>32</sup> The state parties shall also ensure that they shall promote, the exchange of appropriate information concerning among others, education and vocational services with the "aim of enabling state parties to improve their capabilities and skills and to widen their experience in these areas". In this regard, particular account shall be taken of the needs of developing countries.

The International Covenant on Political and Civil Rights has for the first time mentioned in an international document, the varied components required in education. These components, also called in as "4 A's" are, availability of educational institutions, accessibility which has three dimensions: non-discrimination, physical accessibility and economic accessibility; acceptability and adaptability.<sup>33</sup>

### **1.5 Evaluating the 4a's In Reference to Educational Setup in India:**

Availability embodies two distinct community needs: the right to education as a civil and political privilege allows the government to allow non-state entities to set up schools, whereas the obligation to knowledge as a social and economic right needs the state to set them up, or finance them, or to use a mixture of that and other ways to guarantee that education is an economic and social right.

The academic necessity is always there, but just not the educational provision capable of fulfilling certain criteria or conditions. To meet the basic educational needs of people living in that certain city or country, there really is no child care center, no public or private school, little community hall, no bookstore, etc. Most services are limited, serve only some individuals or ages, or run for a certain length of time, and do not access locations or groups that are hard to reach, living in rural and remote areas.

Sometimes, the quality of education is still limited to infants and training, leaving aside the interests of both young children as well as the adult population. It is significant to mention how every individual - infants, kids and adults - and in life has the right to education.

With various levels of schooling, access is described differently. Throughout the universal education age group, the government is required to provide access to education for all students, not for secondary and higher education. In comparison, compulsory schooling should be available for free, while post-compulsory learning can involve payment of tuition as well as other fees and could therefore be absorbed by 'affordability.'

Accessibility has various dimensions: (a) economic accessibility: The right to education means the right to free tuition: no taxes, free access to instructional resources, grants to offset any expenses involved with learning or training. (E.g. transportation, food, etc.); (b) Physical accessibility requires the various requirements required to be able to easily meet the position where the practice takes place (distance from home or work, sufficient highways, basic necessity, visually disabled people's standards, etc.) or the resources required if distance learning (radio, television, internet, etc.) is at stake, and also sufficient plans to be able to join or to visit.; (c) Availability to instruction and pedagogy means the need for students to deal with the primary language) used for correspondence and educational reasons, content, techniques, testing methods, technology, etc., with the required and sufficient assistance whenever appropriate. Since their entry requirements are limited, certain schooling possibilities will not be recognized. Sometimes, completing an educational program or reaping the benefits of a teaching moment means expenses that cannot be afforded by learners or their families, thereby restricting enrolment or encouraging rapid drop - outs; centers are far enough apart or their arrangements are inconsistent with family or earnings operations; lack of sufficient lighting or other safety regulations often limits the involvement of people, especially the girl child. Owing to their position and scheduling, their nuanced practices and routines, and the lack of suitable reading resources, many libraries are unavailable to teenagers, young people and adults.<sup>34</sup> In the context of modern technology, contemporary examples of viable teaching opportunities that are not traditionally usable are to be identified. It is possible to buy and sell computers and other devices, but it will stay under-used because no one knows how to use or restore them, there are no qualified teachers or even basic specifications such as electricity and an internet access.<sup>35</sup>

Therefore, before assuming their utility or efficacy, it is important to ensure that technical advances are genuinely such - that is, developments that are part of an efficient and continuing educational mechanism.

Since the 1990s, the introduction of 'efficiency' before schooling in policy statements has highlighted one crucial facet of school education suitability, prompting legislators to guarantee that accessible and functional education is of good quality. Consequently, the state shall set and enforce mandatory safety requirements or professional requirements for teachers. With both the advancement of international suitability, the scope of social acceptance has been significantly expanded.<sup>36</sup>

School textbook censorship is no unique from every other censorship, except it is rarely revealed as a breach of human rights. The vocabulary of learning was given priority by the emphasis on aboriginal and gender equality, which also makes schooling undesirable if the culture is unfamiliar to young children (and also often to the teacher). In several nations, the abolition of corporal punishment has changed school education, further expanding the adequacy requirements.

The advent of children themselves as performers validating their access to learn and educational freedom promises to give their view of how their rights can be viewed and introduced to the notion of appropriateness.

Over the several legal decisions concerned with the access to education of children with disabilities, adaptability was best conceptualized. National courts have unanimously ruled that schools should conform to infants, relying on the Convention on the Freedom of the Child's idea of the best interests of and child.<sup>37</sup>

The legacy of pressuring children to conform to whatever schooling may have been made open to them was subtly faulted by this reimagining; the college essentially had a right to expel a pupil that did not suit or could not adapt. In comparison, in efforts to offer schooling to incarcerated or working children, a mental disconnection has actually occurred between 'college' and 'schooling'. They will hardly be taken to school, but schooling needs to be taken everywhere it is.

## **1.6 Why is the Disparity in Education Still Being Created?**

Legal funding for schooling from these models is regularly lacking. There is neither a civil right to help nor a legal responsibility to have it. Since one aim of the legislation is to guarantee protection and consistency, it determines who is eligible to what, who is obligated to do what, and what occurs if any actor (including the government) departs from the necessary actions in order to correct the intended behavior.<sup>38</sup>

Domestic education legislation routinely describes schooling as mandatory for children between the ages 6-14 years and points out the administration's corollary duty to make resources available and free of charge. Otherwise, only in principle can schooling be compulsory. As schooling is defined as a public good, children have a responsibility to attend school. It is forced on children to encourage them in becoming financially personality, to help to understand the culture, history and future of the country.

Domestic law on education routinely defines education as compulsory for children aged 6–14, and lays down the corollary obligation of the government to make education available and free of charge. Otherwise, education would be compulsory only in theory. Children have a duty to attend school because education is defined as a public good.

It is imposed upon children so as to enable them to become economically self-sustaining, to enable them to understand the country's language, past and future, to gain an appreciation of the domestic philosophy, faith or political theory that has been picked. It can teach equal rights to children as well, but this is scarcely put into reality. As a result of this, it is pertinent that the State Governments take a ready action for education in reference to the underprivileged section of the society, where right to education is extended to each and every one without any discrimination in accessing the education.

### **1.7 Evaluating the 'Right' In Right to Education: A Supreme Court Evaluation:**

Unni Krishnan<sup>39</sup> was one of the foremost cases in the educational realm, where the court mentioned this point that Right to life also includes within its aspect, the Right to education.

### **1.8 The Relevant Portion of the Judgment Reads as Under:**

“The citizens of this country have a fundamental right to education. The said right flows from Article 21. This right is, however, not an absolute right. Its content and parameters have to be determined in the light of Articles 45 and 41. In other words, every child/citizen of this country has a right to free education until he completes the age of 14 years. Thereafter his right to education is subject to the limits of economic capacity and development of the State.”

It is pertinent to note that under the Right to Free and compulsory education Act, 2009; we find the reference that children between the ages of 6-14 have a right to free and compulsory education. This has also now been enshrined as a Fundamental right under Article 21A.<sup>40</sup> The aspect of education has largely been missed by the State actors in making sure that children get access to education in the coronavirus times. It is in this reference again, the author would want to submit another relevant paragraph from the Unni Krishnan judgment,

“Right to education is not stated expressly as a Fundamental Right in Part III of the Constitution of India. However, having regard to the fundamental significance of education to the life of an individual and the nation, right to education is implicit in and flows from the right to life guaranteed by Article 21. That the right to education has been treated as one of transcendental importance in the life of an individual has been all over the world. Without education being provided to the citizen of this country, the objectives set forth in the Preamble to the Constitution cannot be achieved. The Constitution would fail.”<sup>41</sup>

It is pertinent to note, that the right to education is an integral right without which the future of a child will suffer a lot. If a proper implementation of the right doesn't take place, it will seriously hamper the cognition and response to the external environment of a child.

The relevance of education cannot be ignored in a populous and a developing country like India. The same view was reiterated by the Supreme Court in the case of, Avinash Mehrotra vs. Union of India & Ors<sup>42</sup>



“Education occupies an important place in our Constitution and culture. There has been emphasis on free and compulsory education for children in this country for a long time. There is a very strong historical perspective. The Hunter Commission in 1882-83, almost 125 years ago, recommended Universal Education in India. It proposed to make education compulsory for the children.”

It is not that the aspect of education was never discussed after India attained Independence. It is in this reference that we see that the Kothari commission was established by the Government of India, where the objective of the Commission was to, “The objectives of education should be to increase productivity, to achieve social and national integration, acceleration in the process of modernization, and also to cultivate social, moral, and spiritual values.”<sup>43</sup>

Set up by the Government of India in 1966, the Kothari Education Commission generally advised free and compulsory education for children up to 14 years of age. The Commission noted that the disadvantaged had no other means of getting out of such a plight. In reference to education, the Supreme Court in the case of Ashoka Kumar Thakur mentioned an important facet regarding education and its importance in the country of India.

"It has become necessary that the Government set a realistic target within which it must fully implement Article 21A regarding free and compulsory education for the entire country. The Government should suitably revise budget allocations for education. The priorities have to be set correctly. The most important fundamental right may be Article 21A, which, in the larger interest of the nation, must be fully implemented. Without Article 21A, the other fundamental rights are effectively rendered meaningless. Education stands above other rights, as one's ability to enforce one's fundamental rights flows from one's education. This is ultimately why the judiciary must oversee Government spending on free and compulsory education."

There have been numerous other judgments of the Supreme Court giving impetus to right to education. But in the year 2020, because of the Coronavirus pandemic, we see that Right to Education has been blatantly been violated of the children, as no mainstream education was made available. It also submitted that there were lakhs of children which were affected by the coronavirus pandemic, which left them breathing for education. It is the view of the author, that the right to education has been ignored by the State governments in providing accessible education to the children between all age groups.

## **1.9 Conclusion:**

For articulating a claim on education, we should serve the interest in a manner which will facilitate the maximum learning of the students in all age groups, where the access to education is not a challenge but a privilege, which is given to each and every child, irrespective of his status, class or caste. This purpose will serve two reasons; it will serve the interest of the community and reduce the cost of accommodating the diversity.

With regard to access education as a right, the author points out that in an education policy, there needs to be equal opportunities to access to socially valuable skills and knowledge which is very essential for the overall development of a child. The reason why many schools and political systems do not propagate education for the under-privileged section of the society, is still something which needs to be evaluated further.

As a result of which, the parents accept the whatever form of education which comes to them, as a result of which, there is inaccessibility of education for all age groups, especially the lower strata of the society. The corona-virus pandemic, is a big wake up call for all the people and the governments. It is the need of the hour to create an education system which is accessible and efficient to all the students in the country.

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