

RIGHT TO EDUCATION DURING PANDEMIC

"Rights and liberties in pandemic – constitutional challenges and judicial response in SAARC Countries"

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Abstract: The scheme of the Article 21A and the RTE rests on a two-fold premise, to prevent financial and psychological barriers from hindering access to primary education of children and non-discrimination in the imparting of education. The Covid-19 pandemic saw an unprecedented effect in our education system and as a result battered education systems around the world, affecting close to 90 percent of the world's student population. In India over 1.5 million schools shut down due to the pandemic, affecting 286 million children from pre-primary to secondary levels. The SAARC nations performed well in swift implementation of collective measures to tackle the pandemic. The Union Government of India declared a country wide lockdown of all educational institutions on 16th March 2020. In this regard, National Education Policy 2020 recognize the importance of leveraging the advantages of technology while acknowledging its potential risks and dangers.

Keywords: Education, Pandemic, Right, Technology, Policy

INTRODUCTION

According to UNICEF, the Covid-19 pandemic has battered education systems around the world, affecting close to 90 percent of the world's student population. In India over 1.5 million schools shut down due to the pandemic, affecting 286 million children from pre-primary to secondary levels. This adds to the 6 million children who were already out of the school prior to covid-19. This disruption in Education has severe economic implications too.

A World Bank Report 'Beaten or Broken: Informality and Covid-19 in South Asia, has quantified the impact of school closures in monetary terms- India is estimated to lose \$440 billion (₹32.3 lakh crore) in possible future earnings.

THE IMPACT OF THE PANDEMIC ON EDUCATION –

To examine the impact that the pandemic is continuing to have on schools, the International Association for the Evaluation of Educational Achievements (IEA) and UNESCO together with the European Commission, launched a landmark study. It was titled 'Responses to Educational Disruption Survey (REDS), the study aims to draw a more comprehensive picture of the pandemic's impact on global education for teachers, principals, system leaders and policymakers.

According to UNESCO, more than 90% of all learners were affected by school closures caused by COVID-19 at the peak of the disruption.ⁱ

Varying responses - The report also noted that education systems around the world have varied in their responses to the crisis. While some have introduced homeschooling programs and remote learning, offering free online resources, others are delivering paper-based assignments to student's homes or using public TV and radio broadcasting channels.

UNESCO also revealed a worrying lack in first hand, internationally comparable information from schools, collected in a systematic and scientific manner. The organization says this is needed for evaluating the extent to which teaching and learning have been challenged, continued and adjusted as a result of the current crisis.

"While education systems are generally slow to change and reforms can often take years, the COID-19 pandemic has created a massive pressure to expand digital learning quickly," IEA executive director, Dr. Dirk Hastedt said.

ASER 2020

The Annual Status of Education Report is a nation wide survey of rural education and learning outcomes in terms of reading and arithmetic skills that has been conducted by the NGO Pratham for the last 15 years. Recently, the ASER Survey has been released which provides a glimpse into the levels of learning loss that the students in rural India are suffering with varying levels of access to technology, school and family resources resulting in a digital divide in education. This year, in the wake of the pandemic, the survey was conducted via phone calls. Reaching 52,227 rural households with school age children in 30 States and Union Territories in India.

The annual Status of Education Report 2020ⁱⁱ found that

- 5.5. percent of rural children had not been enrolled for the 2020 school year.
- 5.3% of rural children had not yet been enrolled in school in 2020 in comparison to just 1.8 % in 2018.
- Due to disruptions caused by the pandemic, families were waiting for the physical opening of schools to enroll their youngest children with about 10% of six year olds not in school.
- About 11% of families bought a new phone after the lockdown of which 80% were smart phones.

WhatsApp was by far the most popular mode of transmitting learning materials to students with 75% of students receiving input via this app.

THE SAARC RESPONSE –

The Indian Prime Minister Narendra Modi took to Twitter urging SAARC heads of states meet for a video conference to address the COVID-19 crisis. He reached out to eight-nation grouping – Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Sri Lanka and Pakistan. This was followed by the impromptu virtual summit on 15 March 2020. This was the first high level meeting since India pulled out of the 2016 SAARC Summit that was to take place in Islamabad.

The SAARC nations has performed well in swift implementation of collective measures to tackle the pandemic. At the video conference, PM Modi announced the creation of COVID-19 Emergency Fund and pledged US\$10 million, subsequently all SAARC member states voluntarily pitched in. India also proposed a shared electronic platform for all SAARC nations to help in training of emergency personnel, disease surveillance and joint research.ⁱⁱⁱ

Furthermore, existing mechanisms like the SAARC Disaster Management Centre (SDMC) and the SAARC Development Fund (SDF) has been activated for coordinated response. The SDMC has set up a COVID-19 website with daily updates of confirmed cases throughout South Asia and actions that each country is taking. Meanwhile the SDF has allocated \$5million to soften the blow of financial losses and severe socio-economic impact from the pandemic.

Leadership and political will is critical for substantial joint response and SAARC leaders proposed collective ways to combat COVID-19.

Afghanistan suggested that SAARC adopt a shared tele-medic framework to provide health care to the remotest parts of the region. Maldives called for closer cooperation between countries respective health emergency agencies and a long-term economic recovery plan for the region.

Sri Lanka and Bangladesh emphasized the need for the deliberations to continue at the ministerial level as well as among health experts.

Pakistan offered to hold a SAARC health minister's video conference and proposed establishing a working group of national authorities to exchange health information, data and coordination in real time.

CONSTITUTIONAL SAFEGUARDS:

In 1950, India made a constitutional commitment to provide free and compulsory education to all children up to the age of 14 by adding this provision in Article 45 of the Directive Principles of the State Policy.

The Constitution (86thAmendment) Act 2002 has added a new Article 21 A after Article 21 and has made education for all children of the age of 6 to 14 a fundamental right. It provides that “the State shall provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the State may, by law determine. It is well known that Education is basic human right. For the success of democratic system of government, education is one of the basic elements. An educated citizen has to choose the representatives of the Government. Education gives a person human dignity who develops himself as well as contributes to the development of his country.

In India, the first resolution on National Policy on Education was adopted after independence in 1968 where a radical reconstruction of the education system in the country was proposed. The concept of National education system implies that upto a given level, all students irrespective of caste, sex or location have access to education of a comparable quality.

Then in 2005, a new chapter was added to the educational reforms in the country when Right to Education RTE was passed by the Indian Parliament.

The Legislation: Right to Education Act 2009

The Right of Children to Free and Compulsory Education Act came into force on 1st April 2010. It was initially a directive principle of State Policy and so was non-enforceable in nature. Subsequently through judicial pronouncements, it was held that education is an integral part of a dignified life under Article 21 of the Constitution. It thus became enforceable in nature. With the implementation of the Act it was expected that the issues of school dropout, quality of education and availability of trained teachers would be addressed in the short- to medium term plans. RTE received legislative legitimacy in 2002, when the Parliament inserted Article 21 A to the Indian Constitution and crystallized it as a fundamental right. In 2009 the Parliament took another step to fortify the right by enacting the Right to Education Act 2009. The Act extensively discusses the rights of the citizens and obligations of the State with respect to Right to Education.

The National Commission for Protection of Child Rights (NCPCR) has been designated as the agency to monitor provisions of the Act. The main provisions of the Act are:

- Every child between the age of Six to fourteen years shall have the right to free and compulsory education.
- No child shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing elementary education.
- The appropriate government and local authority shall establish a school, if it is not established within the given area in a period of three years from the commencement of this Act.
- The Central and the State Government shall have concurrent responsibility for providing funds for carrying out the provisions of this Act.

As per the Provisions of the Act, the Central Government has authorized the National Council of Educational Research & Training (NCERT) as the academic authority to lay down the curriculum and evaluation procedure for elementary education and develop a framework of national curriculum. This act is an essential step towards improving each child's accessibility to education.

UNITED NATIONS STANDARDS OF EDUCATION& RECOMMENDATIONS

To mark the third International Education Day on 24TH January 2021, UN Secretary General Antonio Guterres paid tribute to the resilience of the students, teachers and families in the face of the global covid-19 pandemic that, at its peak, forced almost every school, Institute and University to close its doors.

“When education is interrupted, it affects everyone”, he said, and “all of us pay the price”, stressing that education is the foundation for expanding opportunities, transforming economies, fighting intolerance, protecting our planet and achieving the sustainable development goals, (SDGS). Although this disruption has led to learning innovations, he said, it has also dashed hopes of a brighter future among vulnerable populations.

Avert generational catastrophe with that in mind, the UN Chief said that as the world continues to battle the pandemic, education-as a fundamental right and a global public good-must be protected to avert a generational catastrophe.

Even before the pandemic, some 258 Milion children and adolescents were out of school, the majority of them girls. Indeed, more than half of 10 year olds in Low and middle income countries were not able to read a simple text.

“In 2021, we must seize all opportunities to turn this situation around. We must ensure the full replenishment of the global partnership for education fund. And strengthen global education corporation”, the Secretary General explained.

“We must also step up our efforts to reimagine education-training teachers, bridging the digital divide and rethinking curricula to equip learners with the skills and knowledge to flourish in our rapidly changing world”, he said, adding: “let us commit to promote education for all – today and everyday”.

Struggling at home

Volkan Bozkir, President of the 75th Session of the UN General Assembly, commended all teachers, who have adapted their classrooms and undertaken remote lessons in order to ensure continuity in education. He also applauded parents who have done their utmost to facilitate learning at home.

“Above all, I am thinking of all students around the world who are struggling to learn at home, perhaps missing their friends, feeling frustrated or despondent about their future. Do not despair. You will get through this difficult period and you will pursue your dreams”, the Assembly President said in a video message.

He said that it is up to UN Members states to ensure this that this becomes a reality.

“We need to take urgent action in this decade of action and delivery to invest in our education systems, including improving access to technology so that we can recover from this tumultuous period”, Assembly President Bozkir said.

He explained that if the UN and the wider international community are to ensure inclusive and equitable quality education for all, “we need to build resilient inclusive education systems that allow all students to return to school”.

“To do so, we must meet the need of those at risk of left behind. Including children with disabilities and those living in conflict-affected areas, as well as the 11 million girls who are at risk of not re-entering the class room.”

Getting COVID19 Generation back on track

In connection with the International Day, the UN Educational, Scientific and Cultural Organization (UNESCO) released a new data on its interactive monitoring map showing that one year into the Covid19 pandemic over 8 hundred Million students, more than half the world’s student population- still face significant disruptions to their education, ranging from full school closures in 31 countries to reduce or part-time academic schedules in another 48 countries.

Even more concerning is the data released by the UNESCOs global education monitoring report which shows that even before the Covid 19 crisis, only one in five countries demonstrated a strong commitment to equity in education through their financing mechanisms, and there is little evidence of a strong equity angle in responses to the pandemic.

“We need an adequately financed recovery package to reopen schools safely, targeting those most in need and setting education back on track for the covid 19 generation”, Audrey Azoulay, Director General of UNESCO, who added, “today, on International Day of Education, I call on countries and partners to prioritize education, a global common good in the recovery.”

5 STEPS

Securing quality education for all and making sure that the most vulnerable are not left behind is the responsibility of every government, and this is a major challenge in a crisis situation.

Based on the research and technical expertise gathered over decades of working with governments including capacity development support IIEP experts have put together some recommendations that will hopefully be of help and inspiration in these difficult times.^{iv} The five steps recommended have been summarized under the following categories what can be done to address some of the challenges confronting countries as well as teachers, learners and their families when it comes to managing such a crisis, but also draw lessons from the situation and provide guidance on planning and preparing for future class :

- I. Co-ordinate, Plan and communicate
- II. Maintain operational capacities during School / Classes
- III. Provide continuous support to teachers, learners and their families.
- IV. Provide hygiene and health education.
- V. Prepare for school reopening

INITIATIVES OF GOVERNMENT OF INDIA ON EDUCATION DURING COVID-19

To prevent spread of pandemic COVID-19, THE Government of India has taken a number of preventive measures. The Union Government declared a country wide lockdown of all educational institutions on 16th March 2020.

The digital initiatives -

The digital initiatives of MHRD for secondary as well as higher education during COVID-19 are listed as below:

Secondary Education –

1. **Diksha** portal contains e-learning content for students, teachers and parents aligned to the curriculum including video lessons, worksheets, text books and assessments. Under the guidance of its National Board of Education CBSE and NCERT, the content has been created by more than 250 teachers who teach in multiple languages. The app is available to use offline as well. It has more than 80,000 e-books for classes 1 to 12.

2. E-Pathshala is an e-learning app by NCERT for classes 1 to 12 in multiple languages. The app houses books, videos, audio etc. aimed at students, educators and parents in multiple languages. In this web portal NCERT has deployed 1886 audios, 2000 videos, 696 e-Books and 504 flip books for classes 1 to 12 in different languages. Website epathshala.nic.in

3. National Repository of Open Educational Resources (NROER) portal provides a host of resources for teachers and students in multiple languages including books, interactive modules and videos including a host of STEM based games. Website nroer.gov.in

Higher Education –

1. Swayam is the national online education platform hosting 1900 courses covering both school (classes 9 to 12) and higher education (undergraduate, post graduate programs) in all subjects including engineering, humanities and social sciences, law and management courses. The unique feature is that, it is integrated with the conventional education.

2. Swayam Prabha has 32 DTH TV Channels transmitting educational contents on 24x7 basis. These channels are available for viewing all across the country using DD Free Dish Set Top Box and Antenna. The channel schedule and other details are available in the portal. The channels cover both school education and higher education. Website – swayamprabha.gov.in

3. e-PG Pathshala is for postgraduate students. Postgraduate students can access the platform for e-books, online courses and study materials during the lockdown period. The importance of this platform is that students can access these facilities without having internet for the whole day. Website epgp.infibnet.ac.in

Government took proactive measures to control its spread in India. It conducted heavy screening and mandatory quarantined incoming international travelers. All our national borders were sealed. Railway operations were suspended. Further all schools, gyms, malls, clubs, hotels, etc. were shut. But due to the increased risk of the spread of the virus on March 24, the PM announced a complete 21 days lockdown for the entire nation, banning people to move out of their houses. This act, thus severely restricted the community spread of the virus. The lockdown was introduced to break the chain of Covid19 Infection across the country and flatten the curve.

Steps taken amidst the 20 days lockdown^v

1. The Government introduced the Arogya Setu app to educate citizens about the coronavirus and help them make informed decisions about the crisis.

2. The Government set up a chain of 20 Lakh retail shops called Suraksha stalls across India which would provide daily essentials to citizen while maintaining stringent safety norms.

3. Union Human Resource Development Minister, Ramesh Poudyal launched a web portal to monitor and record the initiative by the Ministry to combat covid 19 with knowledge technology and Innovation.(MUKTI)

4. Under its Ujjwala scheme, the government provided 3 LPG refills for the three months to 8.3 crore poor women.

5. Under the PM Kisan Scheme, the finance ministry said that around 6 crores farmers have benefitted amidst the lockdown.

6. Wages under MGNREGA were hiked to Rs. 200 from Rs. 182.

7. A relief package worth Rs. 1.70 Lakh Cr. Was announced in the wake of the Covid 19 outbreak by finance minister Nirmala Sitharaman.

8. The Last date for filing returns of Income tax for financial year 2018 was extended to June 30 2020.

9. Nearly 20 Cr. Women from Dhan Account holders received Rs. 500 each in their account.

10. The Government also released around Rs. 30,000 Cr. In assistance to various sections of the society.

NATIONAL EDUCATION POLICY 2020

The Union Cabinet chaired by Prime Minister Narendra Modi approved the National Education Policy 2020 on July 29 2020. The Policy is based on the Draft National Education Policy 2019 Which THE Committee for Draft National Education Policy – chaired by Dr. K. Kasturirangan, former Chairman of the Indian Space Research Organization submitted to the Ministry of Human Resource Development on December 15, 2018.

The four-part National Education Policy covers school education (Part I); Higher education (Part II); Other Key areas of Focus (Part III) such as adult education promoting Indian languages and online education and ‘Making it Happen’ Part IV which discusses the policy implementation.

The Global Education Development Agenda reflected in the Goal 4 (SDG4) of the 2030 Agenda for sustainable development by India in 2015 seeks to ensure inclusive and equitable quality education and promote lifelong learning opportunities for all” by 2030. Such a lofty goal will require the entire education system to be configured to support and foster learning, so that all of the critical targets and goals(SDGs) of the 2030 Agenda for sustainable development can be achieved.

Higher Education Institute

Given the scenario of epidemics and pandemics, it is critical that HEIs take the lead to undertake research in areas of infectious diseases, epidemiology, virology, diagnostics, vaccinology and other relevant areas. HEIs will develop specific hand holding mechanisms and competitions for promoting innovation among student communities. The NRF will function to help enable and support such a vibrant research and innovation culture across HEIs research labs and other research organizations.

ALTERNATIVE MODES OF QUALITY EDUCATION – ONLINE AND DIGITAL EDUCATION

New circumstances and realities require new initiatives. The recent rise in epidemics and pandemics necessitates that we are ready with alternative modes of quality education whenever and wherever traditional and in-person modes of education are not possible.

In this regard, National Education Policy 2020 recognize the importance of leveraging the advantages of technology while acknowledging its potential risks and dangers. It calls for carefully designed and appropriately scaled pilot studies to determine how the benefits of online digital education can be reaped while addressing or mitigating the downsides. In the mean-time the exciting digital platforms and ongoing ICT based educational initiatives must be optimized and expanded to meet the current and full challenges in providing quality education for all.

ELIMINATING DIGITAL DIVIDE

However, the benefits of online digital education cannot be leveraged unless the digital divide is eliminated through concerted efforts, such as the digital India campaign and the availability of affordable computing devices. It is important that the use of technology for online and digital education adequately address concerns of equity.

TEACHER TRAINING

Teachers require suitable training and development to be effective online educators. It cannot be assumed that a good teacher in a traditional classroom will automatically be a good teacher in an online classroom. Aside from changes required in pedagogy, online assessment also require different approach. There are numerous challenges to conducting online examinations at such scale including limitations on the type of questions that can be asked in an online environment, handling network and power disruptions and preventing unethical practices. Certain types of forces – subjects such as performing arts and science practical have limitations in the online-digital education space, which can be overcome to a practical extent with proper measures. Further, unless online education is blended with experimental and activity based learning, it will tend to become a screen based education with limited focus on the social, effective and psycho motor dimensions of learning.

KEY INITIATIVES

The NEP recommends the following initiatives

1. Pilot studies for online education.
2. Digital infrastructure,
3. Online teaching platform and tools like SWAYAM, DIKSHA,
4. Digital Repository Of Content
5. Addressing the digital divide
6. Virtual Labs
7. Training and incentives for Teachers
8. Online assessment and examination
9. Blended models of learning.

The digital initiatives of MHRD are there for secondary as well as higher education.

- Diksha portal contains e-learning content for students, teachers and parents aligned to the curriculum including video lessons worksheets , text books and assessments.
- E- Patshala- E-learning app by NCERT for classes 1 to 12 in multiple languages.
- National repository of open educational resources.

JUDICIAL RESPONSE TO RIGHT TO EDUCATION DURING THE PANDEMIC.

The Judiciary has been very clear and vocal about the right to Education being fundamental and being incorporated in the Article 21 of the Constitution. Mohini Jain v. State of Karnataka^{vi}. The matter was raised by the petitioners that the right of education is a fundamental right under Article 21 of the Constitution which cannot be denied to a citizen by charging high fee known as Capitation fee.

Though the Supreme Court in Unnikrishnan^{vii} case held that the right to education for the children of the age of 6 to 14 is a fundamental right but even after this, there was no improvement in the situation. A demand was being raised from all corners to make education a fundamental right. Consequently, the Government enacted Constitution 86th Amendment Act 2002 which would make education a fundamental right.

Education Free from fear of Security and Safety standards in School –

The Pandemic has necessitated the Courts to deliberate on the safety and health concerns while the right to education is safeguarded. The Supreme Court has emphasized on education free from fear of Security and Safety standards in Schools. In Avinash Mehrotra v. Union of India^{viii}, the Supreme Court deliberated on the issue of Whether there is fundamental right to receive education free from fear of security and safety and whether the State is obliged to ensure minimum safety standards in schools.

This case arose out of a fire that started in Middle School in Madras. The school, a single thatched roof building with no windows and one entrance and exit was a private school that was said to have sprung up in response to drastic cuts on government spending on education. The fire started in a nearby makeshift kitchen where cooks were preparing a midday meal and killed 93 children and injured many others.

The writ petition was filed under Public Interest Litigation in order to protect school children against similar future tragedies and to improve the conditions of the schools in the country.

The Court decided that there is a fundamental right to receive education free from fear of security and safety and the right to education incorporates the provision of safe schools pursuant to Articles 21 and 21A of the Constitution. No matter where a family seeks to educate its children(i.e., including private schools) the State must ensure that children suffer no harm in exercising the fundamental right to education.

State Governments and the Union Territories were directed to ensure that schools adhere to basic safety standards and that school buildings are safe and secure according to the safety norms as prescribed by the National Building Code and affidavits of compliance were required to be filed by the authorities concerned.

In interpreting the right to education, Dalveer Bhandari J., reasoned:

'Educating a child requires more than a teacher and a blackboard or a classroom and a book. The right to education requires that a child studies in a quality school and a quality certainly should pose no threat to a child's safety.'

Court On its Own Motion on The Basis vs. The State of Bihar 18 September 2020 –

The Issue was pointed out by the news item dated July 6, 2020. This is with respect to the need to ensure that the children can continue their education while sitting at their homes, while also not worrying about their next meal.

On a perusal of the steps taken across the world to ensure continued education during the pandemic, we find that the most common way of providing education has been through remote learning. Remote learning has been practiced through the internet, televisions and radio across multiple countries. However, access to these technologies is low and limited in middle income countries. Therefore, it is also essential to bring on record, the remote learning techniques being used by other countries in the region. Similar to the State of Bihar, populations in these countries have connectivity. The UNICEF in its data factsheet titled Unequal access to remote schooling amid Covid-19 threatens to deepen global learning crisis. An overview of South Asia highlights the steps made by neighboring countries towards ensuring access to remote learning during pandemic.

The Court issued the following directions:

Enhance the role of Anganwadi and NGO workers in every district to help spread the message of the importance of continuing education via remote learning platforms. Parents to be educated for ensuring the child's continuous engagement in education during the pandemic.

Install community level television sets and distribution of radio sets, ensuring the increase of reach of remote learning platforms. Perhaps at the community level, small batches of children can be shown lectures on televisions, while maintaining social distancing norms.

Justice for All vs. Govt. of NCT of Delhi & Ors 18 September 2020

The instant PIL was filed seeking a direction to the respondents to supply free laptops/android mobile phones/Electronic tablets with high-speed internet to children belonging to economically Weaker Sections or Disadvantaged Groups (herein after referred to as EWS / DG) so that they could attend their classes by way of video conferencing just like fee paying students in their classes. It has been held that the Court can apply an updating construction and/or dynamically interpret the provisions of the RTE Act 2009 according to the evolving needs of the Society as well as advent of new technologies like synchronous online learning/communication in the current Coid-19 crisis and/or the unforeseen and unprecedented situation prevailing today. The word Education is a broad term which has a wide import and it must be given the widest amplitude as well as a dynamic interpretation, especially when the said word has been left undefined by the Parliament under the RTE Act 2009. Acts are usually regarded as 'always speaking'. It is presumed that Parliament intends the Court to apply a construction that allows for changes amongst others technological or scientific developments or new natural phenomena or diseases or changes in social conditions that have occurred since the Act was initially framed. Further RTE Act 2009 is not a historical Act but a living and a dynamic document and it ought to receive a pragmatic interpretation. The RTE Act 2009 is a child centric legislation and while interpreting it Article 21 A has to be the guiding principle.

The petition has been heard by way of video conferencing. The issues raised were as follows:

1. Whether RTE Act did not anticipate the covid-19 crisis and does not deal with the unforeseen and unprecedented situation prevailing today? Whether the Court of Law can deal with drastically changed situation, especially when it was not known or visualized by the Parliament?
2. If the RTE Act never contemplated online education as a mode, manner and method of education, whether the court of law should interpret the provisions of RTE Act dynamically, according to the evolving needs of the society and extend the same to the advent of online education under the current pandemic situation?
3. Whether online education through video conferencing is a facet of Article 21 A and Part III of the Constitution and whether failing to provide the requisite equipment for the same would amount to violation of a fundamental right of the student?
4. In the absence of any legal obligation under the Act, and because of the Government mandated shut down of physical schools, whether imparting of education through video conferencing can be seen as a voluntary activity undertaken by private schools? If so, whether such voluntary nature of the activity is outside the purview of the RTE Act and therefore beyond the scope of application of section 12(1)© and Section 3 of the said Act?
5. In the absence of any physical classroom, owing to the current pandemic situation, whether online education through video conferencing is the most efficient mode of imparting education> If so, what would be the basic minimum standards of education that the State and consequently the schools are under an obligation to fulfil in a situation such as the present one? Whether the courts should frame guidelines on these issues that are entirely technical in nature?
6. Whether the obligations under the Act are on the State Government as the appropriate government and to what extent the Central Government is under an obligation for fulfilment of responsibilities under the Act as well as under Article 21 A of the Constitution?
7. Whether appropriate governments is under obligation under Section 12(2) to reimburse expenditure incurred by the private schools in providing devices to students belonging to socially and economically backward classes in the 25% quota, in a situation where the appropriate government is not itself incurring such expenditure in providing education? Whether this obligation can be

equated with the obligation of the appropriate government to reimburse the private school in respect of maintenance of infrastructure in respect of the 25% category students?

8. Whether providing different modes of imparting education to different students within the same class amounts to discrimination and hence, violation of Article 21 A and the fundamental rights under the Part III of the Constitution?

9. Whether for the purposes of the RTE Act, private schools and government schools both by Central Government and State Government as well as different private schools can be placed at the same level?

10. In the absence of any policy framework by the Parliament for dissemination of education during shutdown of school infrastructure and machinery, whether state's duty to make finances available for the purposes of providing free and compulsory education to all children under Article 21 A extends to making electronic devices, taking into consideration the emergency nature of the pandemic?

11. Whether mandatory directions to private schools to provide devices to 25% students from its funds and trusts available (assuming the govt. fails/reimburse the expenditure) would amount to penalizing the private schools for adhering to better standards of education?

12. If the implementation of fundamental right under Article 21 A is "in such manner as the state may by law determine" as envisaged by the Parliament, whether the temporary nature (hopefully) of the pandemic places the mode of imparting education, outside the purview of the RTE Act as it stands today?

13. Whether the application of provisions of the Act to "neighborhood schools" takes online education outside its purview and whether absence of provisions relating to online/distance education is a casus omissus that may be supplied by the Court?

14. What would be the appropriate manner to deal with logistical and financial issues involved in providing the devices and internet connection for online synchronized education and whether courts are equipped to deal with issues that are essentially within executive domain?

HELD :

1. The Court was of the view that its interpretation is in accordance with settled law that Constitutional Courts ought to give a dynamic interpretation to the provisions of the Constitution as well as a Statute, particularly keeping in mind the evolving needs of the Society, more so when such an interpretation is in consonance with the intent and object of the Act.

2. The private unaided schools and Government Schools like Kendriya Vidyalayas under Section 12(1)◎ and Section 12(1)◎ and Section 3(2) of the RTE Act, 2009 are directed to supply gadgets/equipments of optimum configuration as well as internet package so that EWS/DG students have access to online learning, in as much as absence of such equipment prevents the children from pursuing their elementary education.

3. This Court clarifies that it has answered the issues raised in the writ petition in accordance with the Constitution and RTE Act 2009. However, nothing stated herein prevents the Legislatures as well as Executive from re-examining the issues and taking a fresh decision with regard to use and availability of technology and digital means of education as this court is of the view that the present pandemic is botha challenge as well as a generational opportunity to re-imagine education by removing connectivity barriers and related equity gaps and take a quantum jump by assimilating and incorporating latest technology that helps in providing and delivering quality education. The new-initiatives could even bridge the digital divide between different schools and between fee paying and non-fee-paying students that has become evident during the Covid-19 crisis.

Manmohan, J Per Sanjeev Narula, J (Concurring)

1. "It has been extensively discussed by my brother Manmohan J., that The RTE Act 2009 and the term "education" are required to be interpreted dynamically, according to the needs of the changing society. I am in complete agreement with him. At the same time, I would also like to add that while the function as a supplemental mechanism to aid traditional classroom education, and not as a permanent stand – in set up."

2. The RTE Act 2009 is focused on formal school education. Clause 3 of the Statement of Objects and Reasons of the Act reveals the purpose and intent behind the Act to be:

(a) That every child has a right to be provided full time elementary education of satisfactory and equitable quality in a formal school which satisfies certain essential norms and standards. The Scheme of the Act focuses on the obligation of the State to establish schools and the facilitation of formal education for all children in a school building. This can be seen from the stress laid on the establishment of neighborhood schools in section 6 as well as sections 8(b), 9(b) and 10. The norms and standards prescribed in the Act for provision of education specifically provide for the infrastructure of, and for a safe and inclusive environment of a proper formal school- ideally in an all-weather building. The primary aim of the Act is to ensure that every child gets admission in a brick-and-mortar school with a classroom space shared with peers of a similar age-group so as to foster a conducive environment for learning. It is therefore essential to keep in mind that digital education is not a replacement for formal classroom schooling, which is the primary goal of the Right to Education Act 2009.

(b) We must also realize that the use of digital media for digital learning processes is at nascent and evolving stage. The dissemination of education through video conferencing, in my opinion, is not a mere extension of the physical classroom into a virtually created space. Online learning requires active engagement strategies and is not just limited to uploading and delivering content over digital devices. It is a fundamentally different concept, and is still at an experimental stage. Without face-to-face interaction, gathering and retaining the attention of students for a prolonged time and ensuring that the imparted education is understood effectively by each of the attendee in a virtual classroom becomes a demanding task. Blending and integration of ICT in elementary education requires strategic planning and building broad based support amongst the stakeholders. This radically different form of education is bound to pose numerous and complex problems. Thus, in my view, the digitalization of elementary education, which targets children of ages between 6 to 14 years by restricting the child to be a passive receiver without an interactive environment needs deeper probe.

(c) I will also like to note that the New Education Policy 2020 devoted considerable emphasis on the importance of traditional school education. The MHRDs Pragyata Guidelines for digital education while listing out the advantages of digital/online education, recognizes that this format cannot replace classroom learning. The Students Learning Enhancement Guidelines prepared by the National Council of Educational Research and Training (NCERT) also note that alternative modes of education have limitations and do not ensure equitable learning. Government should involve educational and technological experts in the fields to review this emerging mode of education, having regard to the ground realities so that a robust online/digital education system is developed. On the issue of digital divide, right to education and non-discrimination in the present pandemic scenario. It was emphasized that the preamble of our Constitution reminds us of the solemn resolve to secure to all its citizens, social and economic justice and equality of status and opportunity. To transform this into reality, Article 21 A has been introduced in the Constitution of India, followed by the promulgation of the RTE Act 2009. The scheme of the Article 21A and the RTE rests on a two fold premise, to prevent financial and psychological barriers from hindering access to primary education of children and non-discrimination in the imparting of education. We live in a stratified society which has several economic layers. The school system reflects what exists in the society.

Children of the socially and economically weaker sections are normally unable to secure an admission in private schools due to their unaffordable fees. The RTE Act seeks to address this gap via section 12(1)© which mandates all private schools to reserve 25 percent of their seats for children belonging to economically weaker sections and disadvantaged group. The Act has thus paved the way for the weaker sections to seek admission in private schools which would otherwise remain completely out of the reach of such children due to financial constraints. This provision is aimed to reduce disparity, foster equality and to encourage an inclusive education for all. The Act now empowers EWS students to seek admission in private schools as a matter of right. Resultantly, children from the weaker sections and disadvantaged groups can now study side-by-side with other children. It is envisaged that this integrated early childhood education and mentoring in the schools would lay down the foundation of making behavioral changes that would lead to reducing discrimination in our society.

"The precious right guaranteed by the Constitution of India and the RTE Act has to be replicated in the online environment. The private unaided schools have a responsibility of removing all barriers for EWS students that would hinder their access to education. The RTE Act also puts the onus on private schools to promote inclusion and equality.

Non- discrimination is a significant aspect of the scheme of the RTE Act. -

- Section 12(1)© as we have seen creates a special quota to the extent of 25 percent seats being reserved for students from EWS/DG Categories. Section 8© of the RTE Act 2009 places an obligation on the appropriate government to ensure non-discrimination against a student belonging to a weaker section or disadvantaged group.

- Further, Rule 11 of the Right of Children to Free and Compulsory Education Rules 2010 places an obligation upon the schools (referred to in Sub-Clauses (iii) and (iv) of Clause (n) of Section 2 of the RTE Act) to ensure that children admitted in accordance with Clause© of Sub-Section (1) of Section 12 of the Act shall not be segregated from the other children in the classrooms nor shall their classes be held at places and timings different from the classes held for the other children and further they shall not be discriminated from the rest of the children in any manner pertaining to entitlements and facilities such as textbooks, uniforms, library and Information, Communications and Technology (ICT) facilities, extra – curricular and sports.

- Therefore, both the Act as well as the rules read together place an obligation upon the State as well as the schools to ensure that there is no discrimination faced by any student in its application to not apply to a situation when the schools have adopted technology as a medium to impart education.

- The RTE Act lays down the material foundation for creating equal opportunities for everyone in order to reach the ultimate goal of socio-economic justice. Good quality education translates into better employment avenues. By ensuring that EWS students are admitted in private schools we can strive to achieve socio-economic equality. The obligation cast upon the schools and the State by law as provided under RTE Act, has to be appreciated in the right spirit. It is the responsibility of the schools and obligation of the State to assist EWS students to overcome all constraints that deprive them of meaningful education."

CONCLUSION:

In the words of Justice Manmohan in Justice for All vs. Govt. of NCT of Delhi, it was emphasized that the preamble of our Constitution reminds us of the solemn resolve to secure to all its citizens, social and economic justice and equality of status and opportunity. To transform this into reality, Article 21 A has been introduced in the Constitution of India, followed by the promulgation of the RTE Act 2009. The scheme of the Article 21A and the RTE rests on a two-fold premise, to prevent financial and psychological barriers from hindering access to primary education of children and non-discrimination in the imparting of education. We live in a stratified society which has several economic layers. The school system reflects what exists in the society. The SAARC nations has performed well in swift implementation of collective measures to tackle the pandemic. We must also acknowledge that because of the economic impact of the Covid-19 pandemic, there could be a tendency amongst the under privileged children to abandon education for work. This likely fall-out needs to be immediately addressed. Otherwise, the gap, between the learning experiences of children from economically weaker sections as against the relatively privileged children will widen. On a positive aspects of the Post Covid times the recently released Annual Status of Education Report (ASER), a survey conducted this year in 25 states and three Union Territories covering a total of 76,706 households and 75,234 children in the age group of 5-16 years, has revealed that a big shift in enrolment of children from private schools to government ones has happened thanks to Covid-19 induced financial stress. This brings in a new wave of changes, many of which are yet to be unveiled.

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