

**INTERNATIONAL JOURNAL OF LAW  
MANAGEMENT & HUMANITIES**  
**[ISSN 2581-5369]**

---

**Volume 3 | Issue 4**

**2020**

---

© 2020 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

---

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact [Gyan@vidhiaagaz.com](mailto:Gyan@vidhiaagaz.com).

---

**To submit your Manuscript** for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at [editor.ijlmh@gmail.com](mailto:editor.ijlmh@gmail.com).

---

# Impact of Covid-19 on Education: An Analysis from Human Rights Perspective with Special Reference to Indian Constitution and RTE Act, 2009

---

SURAVI GHOSH<sup>1</sup>

## ABSTRACT

*All educational institutions are closed for the time being. The focal point of this Article is to throw some light on 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 a poor country like India. In nutshell, this Article provides an overview of human rights concerns of students who have been depriving from certain benefits regarding their right to education specifically their poor or non-access of ICTs (Information and Communication technologies) since the outbreak of this pandemic and the author has done an analysis of the importance of right to education in the perspective of the Constitution of India.*

**Keywords:** *Constitution of India, Human Rights, Information and Communication technology (ICT), Legislative framework, Right to Education.*

## I. INTRODUCTION

Although the issue of COVID-19 is basically health related but with the progress of time it has shown its ability to destroy the systematic pattern of each and every sector. So, undoubtedly it is a global issue. The whole world is going through a terrible and unprecedented time. The disastrous nature of COVID-19 has already broken the pre-planned scheme of nation states rather say it has been exposing continuously the broken system of various nations. Education is one of the important pillars upon which the whole structure of society stands. Educational institutions are those production houses from which the future of society learns to shine bright. During lockdown, the entire world of us is confined into our cell phones and laptops. It is point worthy to note here that education sector is of no exception in this regard. A huge impact has been bestowed upon this education sector. With the outbreak of this epidemic which has been

---

<sup>1</sup> Author is an Advocate at Burdwan Dist. And Session Judges' Court Dist. Purba Bardhaman, West Bengal and Guest Faculty Member at Dept of Law University of Burdwan (Session 2019-2020), India.

rightly termed as 'Pandemic' each and every activities of human race are in a mode of captivity. Naturally when everyone is confined to their respective houses, being a part of day to day activity education system also becomes one of the victims of this captivity. As a consequence of this, with the lockdown imposed by the concerned Governments education sector is in the lockdown mode irrespective of the territorial jurisdiction of nations. All educational institutions are closed for the time being. 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. So undoubtedly it creates major disruption as well as severe interruption in education sector. In accordance to the recommendations of WHO (World Health Organization) people have to lead their lives by making this pandemic as their companion for the time being unless and until the vaccine for this COVID-19 will be invented. So, even after the lifting of formal lockdown the education sector cannot get its normalcy because according to the opinions of education policy makers no chance can be taken with the lives of future generations. Most of the countries have adapted the plan to shut down all the educational institutions. The story 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.

## **II. RESEARCH METHODOLOGY**

The author has done this brief research as a semblance of doctrinal and empirical research as well as done the survey by generating Google form and circulating it among teachers and students of different parts of the country with the sole purpose of collecting the data and proving the hypothesis. Apart from its empirical part, the author has nurtured all the necessary documents such as national laws, International documents as well as other research reports resembling the similar topic.

## **III. IMPACT OF PANDEMIC ON INDIAN EDUCATION SYSTEM**

Due to the outbreak of this pandemic, people are forced to shift their preferences of adopting technology in their day to day life towards the necessity of accepting it without any kind of

choice. 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 fitted 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 Central Govt. 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 Govt. 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.

#### IV. RIGHT TO EDUCATION AND RIGHT TO EQUALITY- BASIC HUMAN RIGHTS

‘Right to Education’ is recognized as one of the basic human rights undoubtedly. To implement this kind of right many initiatives have been taken by various organizations at international level from a human rights perspective. 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. 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>*

Apart from UDHR, Article 13 and Article 14 of the International Covenant on Economic, Social and Cultural Rights, 1966 reiterate the principle of Right to Education. According to the language of this International Covenant, right to education includes right to free, compulsory primary education for all. Right to education also includes our responsibility to provide basic education for those individuals who have not completed primary education. At the same time, it encompasses the responsibility to eradicate any kind of discrimination at all level of education system, to set minimum standard and to improve overall quality. The provisions related to Right to Education can also be evident from Article 2 of the Protocol of European Convention on Human Rights, UNESCO Convention against discrimination in education, Convention of the elimination of all form 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 etc. In 1990, the World Declaration on Education for All (EFA) was adopted. Apart from these conventions, it is noteworthy to mention other two conventions of International Labour Organization (ILO).<sup>3</sup>

Apart from ‘Right to Education’, another basic human right is note worthy to be mentioned here and that is ‘Right to Equality’. Art.1 of UDHR (Universal Declaration of Human Rights, 1948) proclaims that *“All human beings are born free and equal in dignity and rights”* and

---

<sup>2</sup> Universal Declaration of Human Rights, 1948 Art. 26.

<sup>3</sup> International Labour Organization, Convention No.138 and 182.

more or less Art.2 reiterates almost the same. This Art. emphasizes the prohibition of “distinction(s) of any kind”. With regard to the right of equality, another Article stipulates that “All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.”<sup>4</sup>

Art. 2, 25, 26, 27 of the International Covenant on Civil and Political Rights, 1966 speak about the right to equality. Art. 2 and 3 of International Covenant on Economic, Social and Cultural Rights, 1966 state about the same principle for the state parties. Apart from these major International instruments, there are so many Conventions, which deal with the principle of right to equality and non-discrimination. Wider educational disparities, increased dropout rates and upcoming high rate of illiteracy are the basic concerns to the educational researchers due to the effect of this pandemic. The extent of COVID- 19 on right to education with a touch of equality or equal treatment is far more dangerous and deep, as it can be perceived right now.

## V. AN ANALYSIS FROM THE PERSPECTIVE OF CONSTITUTION OF INDIA

The concept of Right to Education initially was not incorporated as fundamental right in Indian Constitution. However, it was included as Directive Principle of State Policy under Art. 45 of Constitution. Art. 45 can also be construed as supplementary to Art.24. Art.45 can also be supplemented by Art. 39(e) and 39(f). Apart from these, Art. 46 is also very much important in this regard. It is provided under Art. 46 that the State shall promote with special care the educational economic interests of the weaker sections of the people. During this period, Hon’ble Apex court of India has made an implication regarding the idea of Right to Education under Art. 21 of Indian Constitution.<sup>5</sup> In a landmark judgement of *Unnikrishnan, J.P v. State of Andhra Pradesh*, Hon’ble Supreme Court of India has held that fundamental rights and directive principles of state policies are complementary and supplementary to each other.<sup>6</sup> It was also held by that judgement that right to education is included within the purview of right to life and personal liberty and it is a very important fundamental right. The word ‘life’ has been held to include ‘education’ because education promotes good and dignified life.<sup>7</sup> Subsequently to the landmark decision of Unnikrishnan judgement, when the Constitution (86<sup>th</sup> Amendment) Act, 2002 came into force, a new article was introduced in our Indian Constitution. That is Art. 21A that makes the right to education a fundamental right without

---

<sup>4</sup> Universal Declaration of Human Rights, 1948, Article 7.

<sup>5</sup> *Mohini Jain v. State of Karnataka* (1992) 3 SCC 666.

<sup>6</sup> (1993) 1 SCC 645.

<sup>7</sup> *Ashoka Kumar Thakur v. Union of India* (2008) 6 SCC 1.

any kind of doubt. This Art. 21A came into being on and from 1<sup>st</sup> April 2010. According to the language of that particular article, 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 tune of Art. 21A can be strengthened by Art. 51A (k) of Fundamental Duties. The clause (k) was inserted via 86th amendment. It is told by that particular clause 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. Art. 21A has been described as the most important fundamental right and stands above other rights.

## **VI. SALIENT FEATURES OF THE RIGHT TO EDUCATION ACT, 2009**

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 4<sup>th</sup> 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 Art.21 and Art.21A of the Indian Constitution. India became one of 135 nation states to make education a fundamental right. 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. As it is already discussed that Art.51A (k) of the Indian Constitution already casts a fundamental duties 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>8</sup>
- This enactment promotes a friendly learning atmosphere for those children in the

---

<sup>8</sup> The Right of Children to Free and Compulsory Education Act, 2009 s. 3.

schools;<sup>9</sup>

- The provisions of RTE, 2009 at the same time prohibit any kind of physical as well as mental harassment of those children;<sup>10</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>11</sup>
- No child is liable to pay any charges for education under RTE, 2009;<sup>12</sup>
- Most importantly, the RTE, 2009 makes Central and State Govt. responsible to provide Free and Compulsory Education by providing financial and other resources;<sup>13</sup>
- No child shall be held back, expelled, or required to pass a board examination until completion of elementary education;<sup>14</sup>
- This RTE Act 2009 provides the rules regarding the transfer of any child from one school to another school;<sup>15</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>16</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>17</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

---

<sup>9</sup> The Right of Children to Free and Compulsory Education Act, 2009 s. 29(2).

<sup>10</sup> The Right of Children to Free and Compulsory Education Act, 2009 s. 17.

<sup>11</sup> The Right of Children to Free and Compulsory Education Act, 2009 s. S.23, 25, 26 and 28.

<sup>12</sup> The Right of Children to Free and Compulsory Education Act, 2009 s. 13

<sup>13</sup> The Right of Children to Free and Compulsory Education Act, 2009 s. 7, 8.

<sup>14</sup> The Right of Children to Free and Compulsory Education Act, 2009 s. 30(1).

<sup>15</sup> The Right of Children to Free and Compulsory Education Act, 2009 s. 5.

<sup>16</sup> The Right of Children to Free and Compulsory Education Act, 2009 s. 10.

<sup>17</sup> The Right of Children to Free and Compulsory Education Act, 2009 s. 3.

education shall be entitled to free education till completion of elementary education even after fourteen years.<sup>18</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>19</sup>
- A child who completes elementary education shall be awarded a certificate;<sup>20</sup>
- It will apply to all of India except Jammu and Kashmir;<sup>21</sup>
- It provides for 25 percent reservation for economically disadvantaged communities for the admission to Class 1 in all private schools;<sup>22</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>23</sup>
- School infrastructure (where there is problem) to be improved in three years, else recognition cancelled;<sup>24</sup>

The crux of the RTE, 2009 has been imbedded into the phrase of 'Free and Compulsory Education'. Free education means that no child, other than a child who has 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 Govt. 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. So from the above two important phrases it is quite apparent that Govt. has to shoulder the burden of responsibility to spread literacy throughout India among a certain age group.

---

<sup>18</sup> The Right of Children to Free and Compulsory Education Act, 2009 s. 4.

<sup>19</sup> The Right of Children to Free and Compulsory Education Act, 2009 s. 14.

<sup>20</sup> The Right of Children to Free and Compulsory Education Act, 2009 s. 30(2).

<sup>21</sup> The Right of Children to Free and Compulsory Education Act, 2009 s. 1.

<sup>22</sup> The Right of Children to Free and Compulsory Education Act, 2009 s. 12(1).

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

<sup>24</sup> The Right of Children to Free and Compulsory Education Act, 2009 s. 19.

## VII. CONCLUSION AND SUGGESTIONS

According to the inspirational guidelines of UNESCO, every nation must inculcate such educational policies which are incapable to absorb the thinking to achieve every individual's right to education. It sounds really great but the ground reality is something different. Education policies, not only in India but also all over the world are rife with complicacies regarding implementation especially in this untested and unprecedented critical juncture. In the context of India's response to COVID-19, recently HRD ministry has announced a campaign called, '*Bharat Padhe Online*' to seek suggestions from teachers as well as students to make an improvement to the 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 right policy at right time and at right place. More specifically it can be mentioned that in Right to Education Act 2009, Disaster Management Act 2005 or the Epidemic Diseases Act, 1897 no measures are taken to cope up such odd situation when pupil are deprived to get their education. The language of RTE, 2009 is as such that to avail elementary education up to a certain age is of prime importance. However, no such strict remedy has been given under this enactment when students are being detached from their learning for a long time and when disadvantaged students are strongly discriminated to get their right only because of their economic status during such situation. And it is the high time to incorporate the phrase 'online education' within the broad purview of 'Compulsory Education'.

Perhaps the welcome venture to sustain meaningful learning to all lies in the shoulders of Central and State Govt. in association with advanced private or Govt. aided institutions. Therefore, it will be a bigger burden on the stakeholders to chalk out a legitimate framework to eradicate any discrimination or human rights violations. The time has come to recognize the Digital right as basic human right and the Govt. 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 of 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.’*

\*\*\*\*\*

### VIII. REFERENCES

1. Basu, D. D. Introduction to the Constitution of India , Wadhwa Nagpur 2004.
2. Baxi, Upendra. The Future of Human Rights, New Delhi Oxford University Press India 2012.
3. Jain, M.P. Indian Constitutional Law , Wadhwa and Wadhwa Co. Nagpur 2007.
4. Pandey, J.N. The Constitutional Law of India, Central Law Agency, Allahabad 2011.
5. Choudhary, Richa, (2020, 16<sup>th</sup> April), COVID-19 Pandemic: Impact and strategies for education sector in India, *ET Government*.  
<http://government.economictimes.indiatimes.com/news/education/covid-19-pandemic-impact-and-stategies-for-education-sector-in-india/75173099>
6. Epidemic Diseases Act, 1897
7. Disaster Management Act, 2005
8. The Right of Children to Free and Compulsory Education Act, 2009
9. Universal Declaration of Human Rights, 1948
10. International Covenant on Civil and Political Rights, 1966
11. International Covenant on Economic, Social and Cultural Rights, 1966

\*\*\*\*\*