

# CRITICAL ANALYSIS ON IMPACT OF COVID 19 ON THE RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT, 2009

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## ABSTRACT

The impact of covid-19 has challenged the life of many people working in different sectors of the world. Many people lost their employment, many companies were shutdown and other sector started working from home. The major impact of covid-19 was faced by the educational institutions. Many institutions were closed because of the pandemic and exams were postponed. Though many institutions started taking classes through online mode. Education helps in gain knowledge and develop skills. It is the only means by which children who are economically backward can lift up from poverty. Education will also help in empowering women and it can safeguard children from child labour. Providing education to children is always important because education can change the living standards of a child. Therefore, providing education is becoming more important. Majority of the students face difficulty in attending the classes because of non-availability of various resources. The Right of Children to Free and Compulsory Education Act, 2009 has made education compulsory and free. At the present scenario it has become difficult to protect this fundamental right as there are many difficulties in providing education when schools are closed. Providing education is a fundamental right of a child and it should be given free of cost and compulsorily with basic requirement to all the children who face difficulties in attending online classes. Therefore, online education system is being carried out by many educational institutions, but majority of the students are not provided with education. The article briefly discusses about the impact of corona virus on the right of children to free and compulsory education act, 2009.

**Keywords:** Education, Covid-19, Children, Digital Learning, Free, Compulsory

## INTRODUCTION

Education plays a vital role in our life. Education helps in gain knowledge and develop skills. It is the only means by which children who are economically backward can lift up from poverty. Education will also help in empowering women and it can safeguard children from child labour. Providing education to children is always important because education can change the living standards of a child. Therefore, providing education is becoming more important. In India, majority of the parents do not provide education to their children because of poverty. Though many parents are interested in educating their child they do not send them to school because education is provided at higher cost and many are not able to pay higher amount for education. Instead, they send their children to work and earn for their family. Though there are many laws which prohibits child labour and right to education became fundamental right for children, it was not provided effectively, since many parents are illiterate and not aware of the legislations that prohibit child labour. During this crisis many parents lost their employment and they faced difficulties in providing education for children. Though government has taken necessary measure to provide free and compulsory education to children. Now it has become very difficult to provide proper education to children due to non-availability of technology in rural areas. This has also made many parents to send their children to work at younger ages since many parents have lost their work and basic livelihood. Therefore, providing education is a fundamental right of a child and it should be given free of cost and compulsorily with basic requirement to all the children who face difficulties in attending online classes.

Importance of education was emphasised in the neethi shatamakam by bharti haritirsh secretary in the following words<sup>i</sup>:

Education is the special ministration of man

Education is the tenure which can be preserved without the fear of loss

Education secures material pleasure, happiness and fame

Education is god in carnate

Education secures honour of the hands of the state, not money

“A man without education is equal to animal”. Education means knowledge and

“knowledge itself is a power”<sup>ii</sup>

Education can bring social changes in the society. Education should be provided effectively to bring a change in the society. Only if education is provided effectively, a person can develop himself and also support in the development of the society. If education is provided to everyone

with compulsion, it will help the poor to eliminate poverty. There are many measures taken by the government to provide education to the children. Right to education has been protected in both national and international levels. There are many international conventions and national laws that protect the child and ensures right to education as a fundamental right. In India, the Right of Children to Free and Compulsory Education (RTE) Act, 2009 has been passed to ensure free and compulsory education for children.

## **INDIAN CONSTITUTION ON RIGHT TO EDUCATION**

Education is a human right and everyone should be given free and compulsory education. This has been implemented nationally and internationally. A provision for early childhood care and education to children below the age of six years under Article 45 of the constitution. It required to state to make provisions within 10 years for free and compulsory education for all children until they complete the age of 14 years<sup>iii</sup>. But that was not implemented effectively. National Policy on Education, 1986 was the first official document which attested Indian Government's commitment towards elementary education. This was further emphasized in the National Policy on Education, 1986.

In *Mohini Jain v State of Karnataka*<sup>iv</sup> The petitioner has raised the matter stating that right to education was a fundamental right under Article 21 of the Constitution which cannot be denied to a citizen by charging higher fee known as capitation fee. The court held that right to education is a fundamental right at all the level and charging capitation fee for admission is illegal and amounted to denial of citizens right to education. In this case the court has held that right to education is free for all but they have not mentioned the age. Therefore, the matter was again raised in another case where the court did not agree with the decision given in *Mohini Jain's* case where free education was provided to all age group.<sup>v</sup>

*Unni Krishnan v State of AP*, the court held that right to education will be provided for the children of the age of 6 to 14 years is a fundamental right within the meaning of Article 21 of the constitution but thereafter the obligation of the State to provide education is subject to the limits of the economic capacity and development.<sup>vi</sup>

In Article 51A (k) imposes a fundamental duty on parents/guardians “to provide opportunity for education to his child or, as the case may be, ward, between the age 6 to 14 years.<sup>vii</sup>

Though Article 45 and 51-A has clearly mentioned that free education has to be provided to the children between the age 6-14. Implementing it was of great difficulty<sup>viii</sup>. Therefore, it was necessary to bring right to education as a fundamental right.

In our Indian constitution Article 21(A) has been inserted through the 86<sup>th</sup> Amendment Act which has made education a fundamental right. It states 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.<sup>ix</sup> Though education is already dealt in Indian constitution under Article 45 under the directive principles of state policy, it was not implemented effectively. Therefore Article 21(A) was inserted through 86<sup>th</sup> amendment Act and the main object of providing right to education free and compulsory as a fundamental right is to abolish illiteracy in the country. In state of Karnataka v associated management of primary and secondary school, it was observed that the primary school years of a child is an important phase in child’s education and the question that came before the division bench of the Apex court was whether the State could impose mother tongue or regional language as a medium of instruction. This matter was referred to the Supreme Court and it was held that right to free education under Article 21-A did not include the right to choose the medium of instruction/ education at primary level<sup>x</sup>.

## **THE RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT, 2009**

The right to education is under the concurrent list and it is the duty of the central government and each state government to provide basic education for all the children. Under article 21A of Indian constitution also it has specified that all the children should be provided with free and compulsory education from age 6 to 12<sup>xi</sup>. Based upon this The Right of Children to Free and Compulsory Education Act, 2009 came into force in the year 2009. It aims at bringing compulsory and free education for all the children including children belonging to disadvantaged group and weaker section between the age 6-14 in India in a neighborhood school till they complete their elementary education.<sup>xii</sup> Under section 4 of the act it has made special provisions for children above 6 year. It specifies that incase if a child is above 6 years

of age and could not complete his or her elementary education, they shall be allowed in school according to their age group and special training will be given to them on the basis of elementary education.

It is the duty of the appropriate government to check whether children are provided with proper education. In case if it is not provided necessary measure has to be taken to provide education to those children.

This Act also makes it compulsory for teachers to have adequate knowledge in the subject and should have completed the required degree and training for teaching. There is no capitation fee and screening procedure required to join a child in school.<sup>xiii</sup> The school shall not deny admission to any child and they will be asked to provide age proof certificate for reference. This Right of Children to Free and Compulsory Education Act, 2009 prohibits any kind of physical punishment and mental harassment given to the child. In order to protect the right of the child there shall be a monitory committee and advisory committee being constituted under this Act.

This Act has made a great effort in providing compulsory and free education to the children. It has taken all the necessary norms to facilitate education of a child. This Act has protected the right of a child education effective. It has taken necessary measures to protect education. Now a days, education is playing a vital role in society. Being educated is become more important. But many children are not provided proper education due to poverty. Though there are many legislations which protect the child rights, being educated will help a child to manage their basic livelihood.

## **IMPACT OF COVID-19 ON THE RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT, 2009**

Covid-19 has brought many changes in the society. It has made many IT firms to work from home. New technology has helped people to access everything from home and technology has been developed a lot during this crisis. Many people use the technological development for many purposes and it has become easy and faster way to deliver certain information. Though

this technological development is not new, the usage this has become more only after covid-19. Though there are little positive aspect of covid-19, comparatively there are many negative issues being faced by the society due to covid-19<sup>xiv</sup>. Covid-19 has affected many areas and livelihood of many people. It has affected employments of many people and they have become unemployed and started moving to their own native places. Since many works are being carried out through online, the number of employees required becomes less and the companies have stopped recruiting employees. One of the major difficulties faced by the public during the pandemic is educating their children. Many educational institutions were closed and the educational system was affected at large. Though Right to Education Act has made education free and compulsory. During the pandemic the effective implementation of the legislation has become difficult. The Act has provided many measures for bringing up compulsory education but the during the pandemic there was difficulty in implementing the Act effectively. The board examinations got postponed and children faced difficulty due to non-availability of proper education and training.

The recent UNESCO report has shown 213,503,181 as **affected learners all over the world.**<sup>xv</sup> This is due to the non-availability of proper resources available in the rural areas. There are also many measures which are taken by the government to overcome the crisis<sup>xvi</sup>. Though there are many educational institutions that provide online education, majority of the children do not take part in it effectively<sup>xvii</sup>. Many children are not able to concentrate because they do not have proper means to adopt to the new education system. There were many measures taken by the government to protect the education of the children, but they faced difficulties in implanting it.<sup>xviii</sup>

The other major issues that are faced by the parents are, they are forced to guide their child in attending online classes. In the recent NCERT report regarding Students' Learning Enhancement Guidelines also, they have stated in School Education, parents have and are always expected to play a very significant role<sup>xix</sup>. In the COVID-19 pandemic situation wherein school education is being provided through alternative ways, the role of parents has become even more important.<sup>xx</sup> But in India majority of the parents are not educated and many parents go for work on the basis of daily wages. In the mean while guiding their child on the new online education system becomes very difficult for the parents those who are not educated. It is also

difficult for working parents as they are not available at home to educate and train their child. And many parents are scared to access online method of teaching because many parents are not aware of the online security policies that are available to protect their child from accessing unwanted applications.

In order to maintain the fundamental right of a child to get educated, they should implement the right to education Act effectively with response to the present scenario. The government should provide proper access to all the children those who have difficulties in getting access to the online education system. If this is not provided effectively there will be discrimination among the children. For example, in order to ensure Learning Enhancement (LE) during the challenging times of the COVID-19 pandemic the NCERT has prepared Students' Learning Enhancement Guidelines based on the recommendations of committee and on the reports of states/UTs and made the following recommendations<sup>xxi</sup>:

- i. Learning Enhancement during COVID-19 for students without digital devices
- ii. Learning Enhancement during COVID-19 for students with limited accessibility to digital devices
- iii. Learning Enhancement during COVID-19 for students with digital devices<sup>xxii</sup>

But this recommendation is violative of the Right to Education Act and Article 21A. As the Act and our Indian constitution, clearly states that all children should be given free and compulsory education without any discrimination. If the education is based upon the recommendation given by the committee, there will be three category of learners and the learners will face difficulties because of the non-availability of resources. There will be a greater knowledge transmitted to a particular group and others group will not be enhanced effectively through this way of learning. <sup>xxiii</sup>

These recommendations are violative of Article 14 of the constitution. Article 14 clearly states that 'equality before law means that among equals the law should be equal and should be equally administered, that like should be treated alike.'<sup>xxiv</sup> But these recommendations have clearly brought discrimination on the basis of those who have access can learn and others can use the resources that are available. Whereas those who don't have resources will be left out without proper means of learning until the pandemic gets over. This might cause difficulties

after reopening of the school, because half students will have proper knowledge and other half of the students might face difficulty to adopt themselves to the new learning system.

## CONCLUSION

In India, many sectors are affected because of covid-19. One among those are educational institutions. Equally there are many negative impacts of covid-19 on education. Education has always been very important for all the children. Though government has taken many measures to protect the educational strategies, they face major difficulties in implementing it effectively in India. Before Covid-19 there was The Right of Children to Free and Compulsory Education Act, 2009 which has made education free and compulsory. Though education is provided free of cost and compulsorily, during the pandemic many children faced difficulties in getting educated due to non-availability of resources. Therefore, the following recommendations are being made.

- There should be a unique guideline issued to all the children without any discrimination. All should get educated during the lockdown through any other means of communication with proper precautionary measures being taken.
- Many students are not getting access to education during this scenario because of their inability. Many parents are poor and they face difficulties in getting laptops and mobile phones for their children. Therefore, government should provide students laptops, mobile phones with proper internet connection for educational purposes alone to attend online classes and necessary security measures should be taken to protect the child from accessing any other applications that is not necessary.
- This situation is new for everyone to handle. Teachers also face difficulties in accessing online mode of taking classes. Teachers should also be given training to access the online mode of education and they should be trained to circulate the materials and other required documents to children on online.
- There should be an awareness programs conducted by the school to parents and teachers explaining the exact scenario of covid-19 and how they can protect their education through online methods. The NCERT report has stated that the parents should guide their children in this pandemic situation. Since many parents are not educated and not

aware of the present situation. They should be trained to guide their kids for online classes.

- The hours of classes taken should be less with proper intervals, because long time access of digital devices may increase in health issues for children. Therefore, proper measures should be taken to protect the health mentally and physically. They can also be given practical works to do without accessing digital devices.

## ENDNOTES

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- <sup>i</sup> Dr J.N.Pandey, Constitutional Law Of India, (Central Law Publication, Allahabad, 49<sup>th</sup> edition, 2012)
- <sup>ii</sup> Dr J.N.Pandey, Constitutional Law Of India, (Central Law Publication, Allahabad, 49<sup>th</sup> edition, 2012)
- <sup>iii</sup> Article 45
- <sup>iv</sup> AIR 1992 SC 1858
- <sup>v</sup> V.N.Shukla, Constitution of India,(eastern book company, lucknow, 13<sup>th</sup> edition, 2017)
- <sup>vi</sup> (1993) 1 SCC 645
- <sup>vii</sup> Article 51A(K) of Indian constitution.
- <sup>viii</sup> Dr J.N.Pandey, Constitutional Law Of India, (Central Law Publication, Allahabad, 49<sup>th</sup> edition, 2012)
- <sup>ix</sup> Article 21(A) of the Indian constitution
- <sup>x</sup> 9 SCC 485 (2014)
- <sup>xi</sup> V.N.Shukla, Constitution of India,(eastern book company, lucknow, 13<sup>th</sup> edition, 2017)
- <sup>xii</sup> Section 3 of The Right of Children to Free and Compulsory Education Act, 2009
- <sup>xiii</sup> Section 13 The Right of Children to Free and Compulsory Education Act, 2009
- <sup>xiv</sup> Dr. Pravat Kumar Jena “Impact of Pandemic Covid 19 on Education In India” Ijcr 12 (2020)
- <sup>xv</sup> <https://en.unesco.org/covid19/educationresponse>
- <sup>xvi</sup> Available at: <https://www.indialegallive.com/legal/covid-19-and-its-impact-on-education-system-in-india/> (visited on 11-01- 2021)
- <sup>xvii</sup> Joseph Crawford “COVID-19: 20 countries’ higher education intra-period digital pedagogy responses” JALT 3 (2020)
- <sup>xviii</sup> Dr. Pravat Kumar Jena “Impact of Pandemic Covid 19 on Education In India” IJCR 12 (2020)
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- <sup>xxiii</sup> Joseph Crawford “COVID-19: 20 countries’ higher education intra-period digital pedagogy responses” JALT 3 (2020)
- <sup>xxiv</sup> Dr J.N.Pandey, constitutional law of India,78 ( central law publication, Allahabad, 49<sup>th</sup> edition, 2012)