

**IN THE SUPREME COURT OF INDIA
ORIGINAL CIVIL JURISDICTION
WRIT PETITION (C) NO. OF 2020
PUBLIC INTEREST LITIGATION**

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

GOOD GOVERNANCE CHAMBERS (G2 CHAMBERS)
THROUGH ITS VICE PRESIDENT,
GROUND FLOOR, BUILDING NO. 5,
PARK END, VIKAS MARG,
PREET VIHAR, DELHI-110092

PETITIONER

VERSUS

1. UNION OF INDIA
THROUGH ITS SECRETARY,
MINISTRY OF HUMAN RESOURCE DEVELOPMENT ,
LAL BAHADUR SASTRI SMRITI,
MAULANA AZAD RD,
BAL BHAWAN, MAN SINGH ROAD AREA,
NEW DELHI, DELHI 110001. RESPONDENT NO. 1
2. UNION OF INDIA
THROUGH ITS SECRETARY
THE MINISTRY OF ELECTRONICS AND INFORMATION
TECHNOLOGY, ELECTRONICS NIKETAN, 6, CGO
COMPLEX, LODHI ROAD,
NEW DELHI – 110003. RESPONDENT NO. 2
3. THE NATIONAL COMMISSION FOR PROTECTION OF
CHILD RIGHTS, 5TH FLOOR, CHADERLOK BUILDING,
36, JANPATH ROAD,
NEW DELHI, 110001 RESPONDENT NO. 3
4. STATE OF HARYANA
THROUGH ITS CHIEF SECRETARY,
DEPARTMENT OF EDUCATION,
HARYANA CIVIL SECRETARIAT,
SECTOR-1, CHANDIGARH-160001. RESPONDENT NO. 4

5. STATE OF PUNJAB
THROUGH ITS CHIEF SECRETARY,
DIRECTOR GENERAL SCHOOL EDUCATION,
PUNJAB VIDYA BHAWAN (PUNJAB SCHOOL EDUCATION
BOARD) BLOCK E, 5TH FLOOR, PHASE-VIII
SAS NAGAR (MOHALI),
PUNJAB-160062. RESPONDENT NO. 5
6. STATE OF ODDISHA
THROUGH ITS CHIEF SECRETARY,
DEPARTMENT OF SCHOOL & MASS EDUCATION
GOVERNMENT OF ORISSA,
KESHARI NAGAR,
BHUBANESWAR,
ODISHA 751001. RESPONDENT NO. 6
7. STATE OF GUJARAT
THROUGH ITS CHIEF SECRETARY,
DEPARTMENT OF EDUCATION,
BLOCK NO.1, 3RD FLOOR,
NEW SACHIVALAYA COMPLEX,
GANDHINAGAR,
GUJARAT-382010. RESPONDENT NO. 7
8. STATE OF ANDHRA PRADESH
THROUGH ITS CHIEF SECRETARY,
ROOM NO.101, GROUND FLOOR,
PENUMAKA - AMARAVATHI RD,
VELAGAPUDI, 4TH BLOCK,
ANDHRA PRADESH-522503. RESPONDENT NO. 8
9. STATE OF ARUNACHAL PRADESH
THROUGH ITS CHIEF SECRETARY,
DEPARTMENT OF EDUCATION,
CIVIL SECRETARIAT
ITANAGAR-791 111,
ARUNACHAL PRADESH. RESPONDENT NO. 9
10. STATE OF ASSAM
THROUGH ITS CHIEF SECRETARY,
DEPARTMENT OF EDUCATION,
BLOCK-C, 3RD FLOOR, SECRETARIAT, DISPUR,
GUWAHATI-781006 , ASSAM. RESPONDENT NO. 10
11. STATE OF BIHAR
THROUGH ITS CHIEF SECRETARY,
DEPTT. OF HUMAN RESOURCE DEVELOPMENT,

NEW SECRETARIAT,
PATNA-800015, BIHAR.

RESPONDENT NO. 11

12. STATE OF CHHATTISGARH
THROUGH ITS CHIEF SECRETARY,
DEPARTMENT OF EDUCATION,
D K S BHAVAN, ROOM NO. 207, MANTRALAY,
RAIPUR-492 001,
CHHATTISGARH. RESPONDENT NO. 12
13. STATE OF GOA
THROUGH ITS CHIEF SECRETARY,
DEPARTMENT OF EDUCATION,
SECRETARIAT, PORVORIAM,
GOA-403001. RESPONDENT NO. 13
14. STATE OF HIMACHAL PRADESH
THROUGH SECRETARY,
DEPARTMENT OF EDUCATION,
SECRETARIAT, SHIMLA-171001,
HIMACHAL PRADESH. RESPONDENT NO. 14
15. STATE OF JHARKHAND
THROUGH ITS CHIEF SECRETARY,
DEPARTMENT OF EDUCATION,
SECRETARIAT, RANCHI,
JHARKHAND- 834001. RESPONDENT NO. 15
16. STATE OF KARNATAKA
THROUGH ITS CHIEF SECRETARY,
DEPARTMENT OF EDUCATION,
VIDHANA SOUDHA,
BANGALORE-560001, KARNATAKA. RESPONDENT NO. 16
17. STATE OF MAHARASHTRA
THROUGH ITS CHIEF SECRETARY,
DEPARTMENT OF EDUCATION,
ROOM NO.518, 5TH FLOOR,
MAIN BUILDING MANTRALAYA,
MUMBAI- 400032, MAHARASHTRA. RESPONDENT NO. 17
18. STATE OF MADHYA PRADESH
THROUGH ITS CHIEF SECRETARY,
DEPARTMENT OF EDUCATION,
VALLABH BHAVAN, BHOPAL-462003,
MADHYA PRADESH. RESPONDENT NO. 18

19. STATE OF MANIPUR
THROUGH ITS CHIEF SECRETARY,
DEPARTMENT OF EDUCATION,
ROOM NO.171, SOUTH BLOCK,
SECRETARIAT, IMPHAL – 795001,
MANIPUR. RESPONDENT NO. 19

20. STATE OF MEGHALAYA
THROUGH ITS CHIEF SECRETARY,
DEPARTMENT OF EDUCATION,
MAIN SECRETARIAT BUILDING,
SHILONG-793001, MEGHALAYA. RESPONDENT NO. 20

21. STATE OF MIZORAM
THROUGH ITS CHIEF SECRETARY,
DEPARTMENT OF EDUCATION,
CIVIL SECRETARIAT,
BLOCK –C, AIZWAL -796001,
MIZORAM. RESPONDENT NO. 21

22. STATE OF NAGALAND
THROUGH ITS CHIEF SECRETARY,
DEPARTMENT OF EDUCATION,
SECRETARIAT, KOHIMA-797001,
NAGALAND. RESPONDENT NO. 22

23. STATE OF PONDICHERRY
THROUGH ITS CHIEF SECRETARY,
DEPARTMENT OF EDUCATION,
BEACH ROAD, WHITE TOWN,
PUDUCHERRY, 605001,
PONDICHERRY. RESPONDENT NO. 23

24. STATE OF RAJASTHAN
THROUGH ITS CHIEF SECRETARY,
DEPARTMENT OF EDUCATION, SECRETARIAT ,
JAIPUR- 302005, RAJASTHAN. RESPONDENT NO. 24

25. STATE OF SIKKIM
THROUGH ITS CHIEF SECRETARY,
HUMAN RESOURCE DEVELOPMENT DEPARTMENT
TASHILING SECRETARIAT,
SECRETARIAT RD, GANGTOK,
SIKKIM-737101, SIKKIM. RESPONDENT NO. 25

26. STATE OF TAMILNADU
THROUGH ITS CHIEF SECRETARY,
DEPARTMENT OF EDUCATION,
SCHOOL EDUCATION DEPARTMENT SECRETARIAT,
SECRETARIAT, CHENNAI 600 009,
TAMIL NADU. RESPONDENT NO. 26

27. STATE OF TELANGANA
DEPARTMENT OF EDUCATION,
SCHOOL WING, 5TH FLOOR,
BURGULA RAMA KRISHNA RAO BHAVAN,
NH 44, HILL FORT,
ADARSH NAGAR,
HYDERABAD, TELANGANA 500063. RESPONDENT NO. 27

28. STATE OF TRIPURA
THROUGH ITS CHIEF SECRETARY,
DEPARTMENT OF SCHOOL EDUCATION,
OLD SECRETARIAT COMPLEX,
AKHAURA ROAD, AGARTALA,
WEST TRIPURA- 799001. RESPONDENT NO. 28

29. STATE OF UTTAR PRADESH,
THROUGH ITS CHIEF SECRETARY,
DEPARTMENT OF EDUCATION,
LAL BAHADUR SHASTRI BHAVAN,
UP SECRETARIAT,
LUCKNOW-226001,
UTTAR PRADESH. RESPONDENT NO. 29

30. STATE OF UTTARAKHAND
THROUGH ITS CHIEF SECRETARY,
DEPARTMENT OF EDUCATION,
UTTARAKHAND SECRETARIAT,
4B SHUBHASH ROAD,
DEHRADUN -248001,
UTTARAKHAND. RESPONDENT NO. 30

31. STATE OF WEST BENGAL
THROUGH ITS CHIEF SECRETARY,
DEPARTMENT OF EDUCATION,
WRITERS' BUILDING,
KOLKATA -700001,
WEST BENGAL. RESPONDENT NO. 31

32. STATE OF KERALA
THROUGH ITS CHIEF SECRETARY,
DEPARTMENT OF GENERAL AND HIGHER EDUCATION,

2ND FLOOR, SECRETARIAT ANNEX 1,
THIRUVANANTHAPURAM,
KERALA- 695001.

RESPONDENT NO. 32

33. UNION TERRITORY OF ANDAMAN & NICOBAR
THROUGH ITS CHIEF SECRETARY,
DEPARTMENT OF EDUCATION,
ISLANDS SECRETARIAT,
PORT BLAIR, ANDAMAN -744101,
ANDAMAN & NICOBAR. RESPONDENT NO. 33

34. UNION TERRITORY OF CHANDIGARH
THROUGH ITS ADVISER TO ADMINISTRATOR,
SECRETARIAT, SECTOR 9,
CHANDIGARH -160001. RESPONDENT NO. 34

35. UNION TERRITORY OF DADRA & NAGAR HAVELI
THROUGH ITS ADMINISTRATOR,
SECRETARIAT, SILVASA-396230,
DADRA & NAGAR HAVELI. RESPONDENT NO. 35

36. UNION TERRITORY OF DELHI,
THROUGH SECRETARY (EDUCATION),
EDUCATION DEPARTMENT,
OLD SECRETARIAT,
CIVIL LINES,
NEW DELHI-110054. RESPONDENT NO. 36

37. UNION TERRITORY OF JAMMU & KASHMIR,
THROUGH SECRETARY,
DEPARTMENT OF EDUCATION,
CIVIL SECRETARIAT,
SHRINAGAR-190001,
JAMMU & KASHMIR. RESPONDENT NO. 37

38. UNION TERRITORY OF LADAKH
THROUGH DIRECTOR OF SCHOOL EDUCATION,
U.T. SECRETARIAT
LEH, LADAKH-194104,
JAMMU & KASHMIR. RESPONDENT NO. 38

39. UNION TERRITORY OF LAKSHADWEEP
THROUGH ADMINISTRATOR,
SECRETARIAT,
KAVARATTI – 682555,
LAKSHADWEEP. RESPONDENT NO. 39

40. UNION TERRITORY OF DAMAN & DIU
THROUGH ADMINISTRATOR,
FORT AREA, SECRETARIAT
MOTI DAMAN 396220. RESPONDENT NO. 40

**WRIT PETITION UNDER ARTICLE 32 OF THE CONSTITUTION
OF INDIA**

TO

THE HON'BLE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUSTICES OF
THE HON'BLE SUPREME COURT OF INDIA

THE HUMBLE PETITION
OF THE PETITIONERHEREIN

MOST RESPECTFULLY SHOWETH:

1. That by way of the present Writ Petition under Article 32 of the Constitution of India, the Petitioner herein is seeking issuance of Writ Of Mandamus or any other appropriate Writ for enforcement of Fundamental Right of Free and Compulsory Education of children in the age group of six to fourteen years, and various other statutory rights created in consonance with the fundamental rights during the time of covid-19.
2. That the Petitioner herein is a Think Tank formed by a group of Lawyers, Computer Scientists, Economists, Mathematicians, and Thinkers, who have come together to research and suggest policy changes that have a positive impact on the economic state of the country. Good Governance Chambers (G2 Chambers) has office at Co-offiz,Ground Floor, Building No – 5, Park End, Vikas Marg, Preet Vihar, Delhi – 110092. The Email Id of the petitioner organisation is g2chambers.org@gmail.com and phone number as +91- 9560996283. The present petition is being filed by Mr. Ashwani Kumar, Vice President of the Petitioner, he is a an advocate by profession having earning around

A true copy of the Authorization Letter dated 06.07.2020 issued by

the Petitioner herein is annexed herewith and marked as

ANNEXURE P-1 (PAGES 41) A true copy of identity proof of the authorized signatory of the Petitioner dated Nil is annexed herewith and marked as **ANNEXURE P-2 (PAGES 42)**.

3. That the Petitioner does not have any personal interest, personal gain or any other oblique motive in filing the present Writ Petition, and the same has been filed solely in the interest of the public. The Petitioner herein has no civil, criminal or revenue related involvement that has or could have any nexus with the issues involved in the present petition.
4. That the Petitioner has relied upon information which is already in the public domain. The Petitioner has also placed reliance on Circulars/ Guidelines/Reports issued by the Respondents. The Petitioner has also placed reliance upon various news articles published in leading newspapers.
5. That Respondent No. 1 is Union of India through Ministry of Human Resource Development, which is responsible for the development of human resources in India and also deals with primary, secondary and higher secondary education, adult education and literacy in the country.
6. That Respondent No. 2 is the Ministry of Electronics and Information Technology under which the Digital India campaign was launched by the Government of India in order to ensure the Government's services are made available to citizens electronically by improved online infrastructure and by increasing Internet

connectivity and making the country digitally empowered in the field of technology.

7. That Respondent No. 3 is The National Commission for Protection of Child Rights which is a statutory body established by an Act of Parliament for the 'Commission for Protection of Child Rights Act, 2005', and has been appointed as a monitoring body for child's right to education under 'Right of Children to Free and Compulsory Education Act, 2009'.
8. That Respondent No. 4 to 40 are States and Union territories of India through their Education departments, having their own set of laws, rules and regulations to regulate primary, secondary and higher secondary education with their states or Union Territory.
9. That Petitioner is aggrieved by inaction/inadequacy of actions taken by the Respondents during the time of Covid-19 to effectively deal with the issues related to elementary education of children in the age group of six to fourteen years, which is not only recognised as a Fundamental Right under Article 21 A of the Constitution, but also covered under the Right of Children to Free and Compulsory Education Act, 2009. It is submitted that the steps taken by the Respondents to regulate elementary education in the time of Covid-19 are not only grossly inadequate, but also promoting inequality and puts children belonging to weaker section under perpetual disadvantageous position. The Petitioner by way of present petition further wishes to highlights the apathy of the Respondents towards students who are affected by the reverse migration, and are on

verge of dropping out of school due to economic hardships faced by their parents.

10. That since inception of our Republic, the crucial role of universal elementary education has been recognized. Under Article 45 of the Constitution of India the responsibility of State to provide free and compulsory education to all children up to the age of fourteen years has been recognized. Inspite of their being such a provision for several decades since large number of children belonging to disadvantaged groups were not getting elementary education, and therefore the Parliament elevated the right of elementary education of all children in the age group of six to fourteen years as a Fundamental right. In this regard the Parliament enacted Constitution (Eighty-sixth Amendment) Act, 2002 and inserted Article 21A in the Constitution, wherein it is provided that the State shall provide free and compulsory education to all children in the age group of six to fourteen years as a Fundamental Right.
11. Subsequently in order to effectively implement the Fundamental Right as mentioned under Article 21 A, "*The Right of Children to Free and Compulsory Education Act, 2009*" (hereinafter referred to as RTE Act), was enacted which seeks to provide, free and compulsory education to all children in the age group of six to fourteen years till completion of elementary education in a neighbourhood school. Under the RTE Act, the word 'Free education' means that 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. Moreover under the

RTE Act by using the words ‘Compulsory education’ the Parliament has casted an obligation upon the appropriate government and local authorities to provide and ensure admission, attendance and completion of elementary education to all children in the age group of 6-14 years.

12. That with the enactment of RTE Act, India has moved forward to Rights based framework that casts a legal obligation on the Central and State Governments to implement the fundamental right of Children as enshrined in the Article 21A of the Constitution, in accordance with the provisions of the RTE Act. Apart from providing the statutory framework, the Union Govt has also provided adequate budgetary allocation to ensure the effective implementation of the Right of education of children. The Govt of India in the budget for the current year i.e. 2020 has increased the allocation for the education sector to Rs 99,311/- Crore from previous Rs 94,853/- Crore. Out of the total amount of Rs 99,311/- Crore, the department of higher education has been allocated Rs 39,466/- Crore, while the school education and literacy department has been given Rs 59,845/- Crore.
13. That in December 2019, Coronavirus disease (COVID-19) was identified in China, and thereafter it spread rapidly to the rest of the World. It is submitted that the COVID-19 pandemic is the defining global health crisis of our time, and is one of the greatest global humanitarian challenge the world has faced. That although India moved quickly in implementing proactive nationwide lock downs and other restrictions in order to prevent its spread and using the

time to plan and resource responses adequately, Covid -19 has nonetheless affected each and every sector especially education.

14. That as per various reports available online as on March 2020, Due to COVID -19, all over the world billions of children are adversely affected due to closure of educational institutions. As per UNESCO's report, half of the total number of learners some 826 million (82.6 crores) students were kept out of the classroom by the Covid-19 pandemic, not having access to any household computer and 43 per cent (706 million or 70.6 crores) having no internet at home. A true copy of the News Article dated 23.06.2020 published by the TNN is annexed herewith and marked as **ANNEXURE P- 3 (PAGES 43 TO 44).**
15. That India has also witnessed a similar situation wherein educational institution were forced to be closed and are expected to remain closed for coming many weeks and months. There are almost Twenty Four Crore children in the school education system across the country who have been adversely affected by the closing of schools. That closing of school has brought the future of Crores of these students under standstill filled with uncertainties.
16. That as of 20th July 2020, the number of Covid positive patients in India has crossed One Million. The number of Covid positive patients is rising rapidly, and it appears that the India has entered into a community transmission stage. That on one hand Covid-19 being a public health emergency mandates protection of children amid this pandemic requiring closure of schools, and on the other hand closure of schools is posing its own challenges i.e. depriving

the students of opportunity of acquiring knowledge. A true copy of news articles dated 05.06.2020 published in BW Education is annexed herewith and marked as **ANNEXURE P-4 (PAGES 45 TO 47).**

17. Forced by these challenges although various state governments as well as schools have taken steps for imparting education during the closure of schools by adopting recourse to digital mode (i.e. Online classes through smart phones and Laptops), however they failed to acknowledge the digital divide within India evidencing non availability of internet or digital devices to large section of society. It is submitted that due to lack of digitalization in India, the access to smart devices and gadgets along with accessibility to the Internet is not available to large number of students, which poses a serious threat to receiving the intended imparting of education, more so when the majority of children enrolled in such schools comes from economically and socially weaker sections of the society.
18. That Niti Aayog, in its “Strategy for New India@75” Report, highlighted the poor quality and reliability of internet as a major bottleneck in rural area and also pointed out that 55,000 villages in the country are without mobile network coverage. It is submitted that as of 2019, only 45.1 crore population had access to internet out of a population of almost 135 crores. That although some state government are in different ways organizing programs to continue imparting education to students through smart phones and television etc, however non availability of internet or digital devices to large section of society is creating inequality among

school going children which further impacts their future and put them under Perpetual disadvantageous position. A true copy of news article dated 20.05.2020 published in Economics Times, highlighting the digital divide as per “Strategy for New India@75” Report is annexed herewith and marked as **ANNEXURE P-5 (PAGES 48 TO 53).**

19. That Ministry of Human Resource and Development on 14.07.2020 has issued guidelines known as “Pragyata- Guidelines for Digital Education”, with a focus on online/digital education for students who are presently at home due to Covid-19. These guidelines With regards to the availability of digital infrastructure, classifies Indian households into six categories:-

- I. Household with Computer/Smartphone/ Laptop and 4 G internet Connection, with Television and DTH/Cable Connection,*
- II. Household with Smartphone and 4G Internet Connection,*
- III. Household with Smartphone with limited internet connection (2 G & 3G) or no internet connection,*
- IV. Television with DTH/Cable Connection*
- V. Radio Set or basic Mobile Phone with FM*
- VI. No Digital Device*

A true copy of the Pragyata Guidelines for Digital Education, issued by the Ministry of Human Resource Development, Government of India dated Nil is annexed herewith and marked as

ANNEXURE P-6 (PAGES 54 TO 97).

20. That the MHRD, in the guidelines although recognises the households having no internet access or Digital Devices, however it expressly provides that the focus is on the mechanisms of teaching

and learning with the help of digital/online education. The guidelines admittedly ignores the large chunk of students who are at a disadvantageous position due to their economical and social background as they do not have access to Internet or Digital devices and therefore these students require immediate attention of the authorities.

21. That the Pragyata Guidelines issued by the MHRD although in bits and pieces attempts to address the grievances of students without access to internet or digital devices including Radio sets, however the steps suggested are lame and non-practical, and doesn't address the situation at all. For example the Guidelines in regard to students having no access to Television/Radio Set suggests that such students can use the Community Television/Radio set at Panchayat offices. Such a suggestion defeats the very purpose of closing down of schools which is to keep the children safe within their households. If the MHRD is open to sending the group of these students to Panchayat Bhawan, then wouldn't it be better to send them back to schools as the Perils to health remains the same in both the situation with latter being more beneficial to the students. Moreover the guidelines in respect to student having no access to Mobile phone, suggests using Mobile phones of neighbours, which is also not practical.
22. That it is also relevant to mention that various other initiative taken by Government like 'PM e-VIDYA' and 'DIKSHA' etc launched with the aim to unify to digital/online/on-air education presupposes and assumes that that each student in the farthest corner of country

is equipped with television access, internet access or has digital gadgets and fails to recognize that India has a long way to go to be a fully digitalized country.

23. That the Respondents while taking recourse to Online education further failed to acknowledge that the students of Primary school do not have the ability to operate digital online platforms and require third party help and constant supervision. It is submitted that the students belonging to households not adequately aware of the technology further poses another problem to imparting education through technology, and therefore adequate measures are required to be taken in this regard as well.
24. That in view of the above mentioned facts, it is clear that with the ever present digital divide in India, children not having access to online education are suffering due to lack of sufficient means to access them. That the severity of the situation can be accessed from the fact that recently The Tribune in its news article reported that a Man from Palmpur, was forced to sell his cow, his only source of income, for Rs.6000/- in order to buy a smartphone for online studies of his two children. That the same was done as the schools in which his students were enrolled started online classes and insisted on smartphones for the children in order to continue the study. A true copy of the news article dated 23.07.2020 ‘Man sells cow to buy smartphone for online studies of his children’ published in The Tribune is annexed herewith and marked as ANNEXURE P-7 (PAGES 98 TO 99). That in the present scenario the Respondents are urgently required to formulate alternative

strategies to address the problem of students suffering due to non - availability of internet, and digital devices.

25. That the Respondents with the objective of bringing the marginalized students (especially in rural and remote areas without access to internet and digital devices) at par with students having access to online education, as an urgent measure must focus on radio education programmes. The use of radio as distance learning solutions is not only most economical but also a powerful way to bridge the digital divide in the education sector. Various countries in the Covid 19 period have taken recourse to Radio and T V based education, which has proven to be a good alternative in cases where online learning is not possible. A true copy of news article dated 15.05.2020 titled as ‘Radio lessons: In Africa schools are closed, but learning goes on: Countries use radio, TV and internet to keep students engaged’ available on official website of the United Nations is annexed herewith and marked as **ANNEXURE P-8**
(PAGES 100 TO 103).

26. That at this juncture it is pertinent to point out that inability of students to access online education because of non- availability of digital devices due to economic constraint not only infringes their fundamental right guaranteed under Article 21 A of the Constitution, but also negates the object of Right to Free and Compulsory Education Act, 2009. It is submitted that under Section 3 of the RTE Act, the students are protected from paying any kind of fees or charges or expenses which may prevent them from pursuing and completing the elementary education. Moreover this

Hon'ble Court in case of *Society for Un-aided schools of Rajasthan Vs Union of India [2012] 6 SCC 1]* has held that the word "Free" in the long title of the Right to Free and Compulsory Education Act 2009 stands for removal by the State of any financial barrier that prevents a child from completing 8 years of schooling.

27. Since in the present time students belonging to economically weaker section are unable to access online classes due to non-availability of digital devices/internet, as their parents are unable to afford the same due to financial constraint and therefore the same defeats the rights of Children conferred under RTE Act. The state govts in order to fulfill their responsibility and to remove the impediment of non- availability of digital devices to the students are immediately required to take steps to provide Digital means to all such students. The Respondents as an immediate measure must come out with a plan to supply every child belonging to weaker section of society with a radio set in order for children to stay in touch with educational programme being run by the Governments.
28. At this juncture it is pertinent to point out that the Radio devices are most economical digital devices and can be procured at a cost of Rs 500/- approx per set. Since the govt in the current budget has already allocated an amount of Rs 59,845/- Crores for school education, and therefore making an allocation for supply of Radio set to disadvantaged group of students which is necessary to bring them to the stream of online education can easily be done. Moreover in the past we have witnessed that various state governments have distributed the Laptops and Computer sets etc to

students even when the government were not under any statutory obligation to provide such devices, and therefore in the current scenario keeping the rights of Child belonging to disadvantaged group in mind, the govts must consider supplying digital devices to students who are currently unable to pursue the education due to lack of digital devices. A true copy of the News Article dated 11.03.2013 titled 'India: Uttar Pradesh state gives away free laptops to students' published in BBC News is annexed herewith and marked as **ANNEXURE P-9 (PAGES 104 TO 105)**. A true copy of news article dated 01.12.2018 about distribution of laptop in Tamil Nadu in news article titled as 'MADURAI, Govt. to distribute 15 lakh free laptops: Minister' published in The Hindu is annexed herewith and marked as **ANNEXURE P-10 (PAGES 106 TO 107)**.

29. That apart from the lack of attention to digital divide, the steps being taken by various state governments and schools to regulate the elementary education vastly differ from each other showcasing no uniformity thereby creating inequality among school going children. It is submitted that there is wide disparity among the measure and tools adopted for imparting education both at interstate and intra state level. It is pertinent to mention that there are many states including Delhi, which are allowing and continuing online education while there are many states like Telangana wherein the process of online education has failed to take off due to lack of infrastructure in Govt. School. Then there is a third category of state like Karnataka which has prohibited conducting online classes

for pre-primary level to class 10th. However in interesting turn of events, High court of Karnataka has stayed the ban on online classes stating that the ban prima face violates Fundamental Right to education.

30. It is submitted that there is also a wide disparity among the measures and tools adopted by Government schools and a Private schools operating within the same state. It is submitted that the Private Schools with resources have swiftly transitioned to online teaching by way of digital online platforms and therefore have not allowed its students with access to digital devices and internet to suffer due to closure of schools. However while doing so these private schools fails to take into account that RTE Act mandates reservation of 25% percent of seats for children belonging to socially and economically weaker sections which may not have access to such online modes of education using internet and digital devices. Therefore, these children belonging to comparatively weaker section of society are unable to access online classes due to economic and technological constraints. That without proper means to receive the same education, these children inspite of being part of the same school are not getting the equal access to education as their counterparts studying in the same school are getting, and therefore are being discriminated due to such action of Schools. Moreover the state govt have failed to take any action against such discriminatory practices adopted by the Schools.
31. That children studying in Private schools provided with online classes having access to digital devices are getting continuous flow

of education, and for such students online education, despite some shortcomings, has proven to be a boon. That Further not all private schools are being able to provide online classes especially small schools as they do not have the capacity and capability to go online, further creating a distinction among students enrolled with private schools which are able to provide online education and those which are unable to provide online classes. A true copy of news article dated 07.07.2020 titled 'As parents struggle to pay fees, low-cost schools fear closure, dropouts' published in The Indian Express is annexed herewith and marked as **ANNEXURE P-11 (PAGES 108 TO 110).**

32. That in view of facts highlighted above it can be concluded that the state governments and the private schools without realizing the inherent discrimination are promoting the divide among students, which is violative of Fundamental Right to equality guaranteed under Article 14 of the Constitution. Therefore in order to curb the said discriminatory practices there is an urgent need to formulate a uniform education policy in every state which ensures participation of all children including children belonging to weaker section of society with regard to imparting elementary education during Covid-19 crisis.
33. That it is also important to take into account that due to the lockdown and spread of Covid-19 pandemic millions of migrant workers in cities have been rendered jobless, forcing them to return to their native villages to escape hunger. No exact data in regard to mass reverse migration is available, however as per the Statement

of the Ld Solicitor General, made before this Hon'ble Court Ninety Seven lakhs labours along with their families have been transported back home. A true copy of news article dated 11.06.2020 titled 'Huge gaps in migrant data submitted by states to labour ministry, Supreme Court' published in The Times Of India highlighting the number of migrant labour from various states is annexed herewith and marked as **ANNEXURE P-12 (PAGES 111 TO 112)**.

34. That the reverse migration of these large numbers of people further raises concern regarding the access of education to such students who were earlier enrolled and studying in cities and towns but have now returned to villages alongwith their families. That such children are the ones encountering most obstacles in accessing education. That the demographic position of their living clubbed with other economical, social and technological reasons, makes it difficult for them to access online materials and virtual classrooms functioning , and therefore due to these reasons the risk of these children falling further behind in school cannot go unnoticed.
35. That it is important to understand that in times when survival remains the biggest challenge in the lives of these migrating families, education itself becomes a secondary concern. It is submitted that for Children of migrant labourer, education has taken a backseat and without proper initiatives, the chances of them to continue education seems bleak. It is submitted that without such special initiative these children are at the risk of dropping out of school and may discontinue further education. A true copy of the news article dated 30.05.2020 published in Times of India titled as

‘Migrant children at risk of dropping out of school after moving back to hometowns: Experts’ is annexed herewith and marked as **ANNEXURE P-13 (PAGES 113 TO 116).**

36. That experts all over the country are opining that due to Mathew Effect, children of migrant labourer may suffer the most. According to experts those who start well in reading continue to do so, while those who do not are unlikely to catch up. That as per experts this Mathew effect will affect the girls even more than the boys. That the non-preference of digital access to girls will accentuate this impact, and girls will be left behind in the classroom. Unable to catch up due to the prolonged gap, they may be forced to drop out of school. A true copy of News article dated 19.06.2020 titled ‘Most of the girls from families of migrant workers are in the vulnerable age where they are likely to get married’ published in The Better India highlighting the Mathew effect on girls from families of Migrant workers is annexed herewith and marked as **ANNEXURE P-14 (PAGES 117 TO 120).**

37. It is submitted that none of the Respondents as well as schools have shown any concern about the physical, mental and emotional state of children who have undergone the trauma of reverse migration from a metro city to their villages or the painful journey, hunger and malnutrition they experienced. In view thereof there is a dire need for special policies focused on children of migrant labourer. That the special provisions must be made in order to encourage such children to continue education even when they do not have access to online education or digital

means of education. It is submitted that the MHRD although has issued a detailed Guideline (Pragyata Guidelines) for students who are presently at home due to Covid-19, however it completely ignores the students who are affected by the reverse migration and are on the verge of dropping out of school due to economic hardships faced by their parents coupled with the loss of employment. The Guideline doesn't even attempt to make an endeavour in regard to such category of students which will affect their Fundamental Right to education.

38. That in order to ensure that these children do not miss out on education, there is an immediate need to set up a committee in each district consisting of officials from education department and local volunteers to identify such children and to enroll them in government schools depending upon their abilities and learning skills. There is also an urgent need to widely publicise the scheme with the help of community people to reach out to the children of migrant workers.
39. That apart from above special relaxations in rules, regulations and policies is also necessary to cater to the needs of such children. That the circumstances of migration were such that it may not have been possible for the migrant families to have carried academic documents including mark sheets or other relevant documents of their children, which may now pose as a hurdle in their taking admission in nearby schools. That in view of the same it is important that the guidelines may be provided for allowing such children to take admission in nearby schools even without required

documents including mark sheets, Provisional certificates, Character certificates and School leaving leaving certificate/ Transfer Certificate. That the same is in consonance with the spirit of section 5(2) of the Right to Fee and Compulsory education which enumerates that delay in producing transfer certificate shall not be a ground for either delaying or denying admission in such other school.

40. That in absence of any special policies there can be a vast difference in education opportunities available to children of migrant labourer. Further, this absence of educational opportunities in the long run has the potential to have a major effect on future employment opportunity creating a perpetual cycle of being denied similar opportunities and therefore requires immediate attention of this Hon'ble Court.
41. That apart from children of migrant labours another section of children which has particularly went unnoticed are disabled children. It is submitted that the children suffering from cerebral palsy or having visual or hearing impairments haven't attracted any attention of the Government and are facing extreme difficulties in using and gaining through e-leaning programme. Moreover the situation of disabled children from financially weak backgrounds or domiciled in rural area is worse yet ignored by most of educational institutions and even by the governments.
42. It is submitted that the whole concern of Pragyata Guidelines for disabled children is on the ways to teach them online, however it completely ignores the concerns of disabled children without access

of internet or digital gadgets or television or any other such means. A true copy of News article dated 21.06.2020 titled as 'COVID-19: Students With Disabilities Struggling With E-Learning, NGOs Call For Accessible Approach' published in NDTV News is annexed herewith and marked as **ANNEXURE P-15 (PAGES 121 TO 123)**.

43. That further there is no uniformity in the decision over opening of schools and operation of schools in post-covid scenario. That many states in India have decided to reopen school in mid-August while interestingly, two district in Maharashtra have already reopened the school. A true copy of the news article dated 10.07.2020 titled 'Maharashtra School Reopening News: Physical classes for students of 9-12 resume following State Govt's SOP' published in Times Now News is annexed herewith and marked as **ANNEXURE P-16 (PAGES 124 TO 125)**.

44. That reopening of schools in the extra -ordinary circumstances is a step opposed by my parents. That parents of school going children are reluctant to send their children to school and in fact urging the government to not re-open the school. Recently, after Maharashtra decided to reopen school, parents of students across the state met with state Education minister and urged to hold-off reopening of schools till a vaccine is found. A true copy of news article dated 05.07.2020 titled 'Do not reopen schools until Covid vaccine is found: Parents to education minister' published in Hindustan Times on 05.07.2020 is annexed herewith and marked as **ANNEXURE P-17 (PAGES 126 TO 127)**.

45. That on one hand it is necessary to educate children and on the other hand it is equally important for children to be protected against the grave dangers of Pandemic Covid-19. It is important that state govts while keeping the importance of education in mind also keep in mind that children due to their age and understanding, may not be able to maintain social distancing norms or to abide by protective measures all the time. There is a grave need for governments to cautiously formulate policies prescribing uniform measures to be implemented regarding opening up of schools, time lines for opening of schools and measures to be followed when schools are opened within a state.
46. That situation like these point out that lack of uniform policies may result into discrimination and disparity within the states and also at national level for the students pursuing elementary education. That it is important that in order to arrive at the strategy and time line for opening of school and for preventing of such disparity, a committee may be formed of experts from all concerned streams like education, policy making, medicine, health etc. to advice the appropriate governments over time line for reopening of schools and related issues.
47. It is further submitted that since the substantial time have already been lost as most of the Schools throughout the Country are closed, and therefore there is an immediate need to prepare revised curriculum/syllabus for the current academic session keeping in mind the academic year already lost. At this juncture it is relevant

to point out that if the Curriculum/ syllabus is not revised/ reduced proportionate to the time already lost, the teachers will attempt to rush into completing the Syllabus which will create unnecessary hardships for the students. Some of the state governments have already taken decision to reduce the Syllabus for the current Academic session keeping in view the substantial time which has been lost due to ongoing COVID crisis. Therefore in order to protect the students from being rushed into completing the syllabus, the Syllabus is required to be revised/reduced immediately. A true copy of the news Article dated 09.07.2020 titled ‘Education department to reduce syllabus soon’ published in Hindustan Times on 09.07.2020 in regard to reduction of Syllabus is annexed herewith and marked as **ANNEXURE P-18 (PAGES 128 TO 129)**.

48. Being aggrieved by inactions of the Respondents, the Petitioner is approaching this Hon’ble Court under Article 32 of the Constitution of India on the following Grounds which are taken inter alia and without prejudice to one another and such other grounds as may be advanced at the time of hearing of this Petition.

GROUND S

- A. Because while recognizing the critical role of universal elementary education under Article 45 of the Constitution of India the responsibility of State to provide free and compulsory education to all children up to the age of fourteen years has been provided.

- B. Because under Article 21A of the Constitution of India, fundamental right of free elementary education of all children in the age group of six to fourteen years has been guaranteed.
- C. Because under “The Right of Children to Free and Compulsory Education Act, 2009” all children in the age group of six to fourteen years have been conferred with the right to free and compulsory education till completion of elementary education in a neighbourhood school.
- D. Because under Section 3 of “The Right of Children to Free and Compulsory Education Act, 2009”, the students are protected from paying any kind of fees or charges or expenses which may prevent them from pursuing and completing the elementary education.
- E. Because Section 9 of “The Right of Children to Free and Compulsory Education Act, 2009” provides that it is the Duty of local authority to provide free and compulsory elementary education to every child, ensuring that the child belonging to weaker section and the child belonging to disadvantaged group are not discriminated against and prevented from pursuing and completing elementary education on any grounds.
- F. Because this Hon’ble Court in case of Society for Un-aided schools of Rajasthan Vs Union of India [(2012) 6 SCC 1] has held that the word “Free” in the long title of the “Right to Free and Compulsory Education Act 2009” stands for removal by the State of any financial barrier that prevents a child from completing 8 years of schooling.

- G. Because under the “The Right of Children to Free and Compulsory Education Act, 2009” by using the words ‘Compulsory education’ the Parliament has casted an obligation upon the appropriate government and local authorities to provide and ensure admission, attendance and completion of elementary education to all children in the age group of 6-14 years.
- H. Because due to the COVID-19 Pandemic educational institutions in India were forced to be closed in March 2020, and are expected to remain closed for coming many weeks and months. Due to this closure almost twenty four crores children in the school education system across the country have been adversely affected, and future of crores of these students are under standstill filled with uncertainties.
- I. Because the steps taken by various state governments as well as schools for imparting education during the closure of schools by adopting recourse to digital mode have ignored the digital divide within India. It is submitted that as of 2019, only 45.1 crore population in India had access to internet.
- J. Because, the methods adopted by the Respondents not only fails to acknowledge the digital divide within India, but also reflects that there is a general lack of effective and adequate alternative strategies even in cases where non availability of internet, digital devices has been acknowledged.
- K. Because the access to smart devices and gadgets along with accessibility to the Internet is not available to large number of students, which poses a serious threat to receiving the intended

imparting of education, more so when the majority of children comes from economically and socially weaker sections of the society.

- L. Because although some state government are in different ways organizing programs to continue imparting education to students through smart phones and television etc, however non availability of internet or digital devices to large section of society is creating inequality among school going children which further impacts their future and put them under perpetual disadvantageous position.
- M. Because the steps taken by Governments including guidelines issued by governments are inadequate to sufficiently deal with the hurdles of implementation of Online education for all children throughout the country.
- N. Because inability of students to access online education because of non availability of digital devices due to economic constraint not only infringes their fundamental right guaranteed under Article 21 A of the Constitution, but also negates the object of Right to Free and Compulsory Education Act, 2009.
- O. Because the Respondents with the objective of bringing the marginalized students (especially in rural and remote areas without access to internet and digital devices) at par with students having access to online education, must focus on radio education programmes. The use of radio as distance learning solutions is not only most economical, but also a powerful way to bridge the digital divide in the education sector.

P. Because there is a wide disparity among the measures and tools adopted by government schools and private schools operating within the same state, thereby affecting the Right to equality of students pursuing elementary education within a state.

Q. Because the children belonging to comparatively weaker section of society are unable to access online classes due to economic and technological constraints. Although these children inspite of being part of the same school are not getting the equal access to education as their counterparts studying in the same school are getting, and therefore are being discriminated due to such action of the Respondents.

R. Because, there are many private schools which are unable to provide with the facilities of online education to students enrolled with such schools due to various reasons including unavailability of sufficient funds.

S. Because the state governments and the private schools without realising the inherent discrimination are promoting the divide among students which is violative of Fundamental Right to equality guaranteed under Article 14 of the Constitution of India.

T. Because Article 14 of the Constitution of India which forms basic structure of the constitution, through the expression ‘Equality before Law’ implies absence of any special privilege in favour of any individual.

U. Because this Hon’ble court in the matter of Sriniwas Theatre & Ors V. Government Of Tamil Nadu & Ors (AIR 1992 SC 999) held as under:

“Equality before law is a dynamic concept having many facets. One facet-the most commonly acknowledged-is that there shall be no privileged person or class and that none shall be above law. A facet which is of immediate relevance herein is the obligation upon the State to bring about, through the machinery of law, a more equal society envisaged by the preamble and part IV of our Constitution. For equality before law can be predicated meaningfully only in an equal society i.e., in a society contemplated by Article 38 of the Constitution

- V. Because there is a major failure on the part of government to take into account the problem of children of migrant labourer and the concern regarding their further continuation of education.
- W. Because the reverse migration of large numbers of people raises serious concern regarding the access of education to such students who were earlier enrolled and studying in cities and towns, but have now returned to villages along with their families.
- X. Because the children affected due to reverse migration are the ones encountering most obstacles in accessing education, as their demographic position of their living clubbed with other economic, social and technological reasons, makes it difficult for them to access online materials and virtual classrooms functioning.
- Y. Because in the current times survival remains the biggest challenge in the lives of these migrating families, and therefore education itself becomes a secondary concern, and without proper initiatives, the chances of them to continue education seems bleak.

Z. Because the MHRD although has issued a detailed Guideline (Pragyata Guidelines) for students who are presently at home due to Covid-19, however it completely ignores the students who are affected by the reverse migration and are on the verge of dropping out of school due to economic hardships faced by their parents coupled with the loss of employment. The Guideline doesn't even attempt to make an endeavor in regard to such category of students which will affect their Fundamental Right to education.

AA. Because the Respondent have ignored the difficulties faced by disabled children during the Covid 19. It is submitted that the children suffering from cerebral palsy or having visual or hearing impairments haven't attracted any attention of the Government and are facing extreme difficulties in using and gaining through e-learning programme.

BB. Because the respondents have ignored the mandate of "The Rights of Persons with Disabilities Act, 2016" which provides that the appropriate Government shall ensure that the Person with Disability enjoy the right to equality, life with dignity, and respect for his or her own integrity equally with others.

CC. Because the situation of disabled children from financially weak backgrounds or domiciled in rural area is worse yet ignored by most of educational institutions and even by the governments.

DD. Because there is no uniformity at inter-state level and intra-state level regarding opening of schools, timeline for re-opening of schools and operation of school in post-covid scenario.

EE. Because a very cautious approach is required to be adopted while taking decision regarding opening and operation of schools in post-covid scenario, as on one hand it is necessary to educate children and on the other hand it is equally important for children to be protected against the grave dangers of Pandemic Covid-19.

FF. Because there is an urgent need to prepare revised curriculum/syllabus for the current academic session keeping in mind the academic year already lost. It is submitted that if the Curriculum/ syllabus is not revised/ reduced proportionate to the time already lost, the teachers will attempt to rush into completing the Syllabus which will create unnecessary hardships for the students.

GG. Because Article 46 of the Constitution provides that the State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

HH. Because Article 2.1 of the UN Convention on the Rights of the Child provides that “Every child without discrimination of any kind, irrespective of the child’s or his/her parents or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status is born with the same rights”

II. Because under Article 3 of the UN Convention on the Rights of the Child, it has been provided that “in all actions concerning children, whether undertaken by public or private social welfare institutions,

courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”.

49. The Petitioner has no other alternative efficacious remedy except to file the present Writ Petition under Article 32 of the Constitution of India seeking redressal of its grievances.
50. The Petitioner has not filed any other writ petition in any other court in India praying for similar relief.
51. That the annexures are true and copies of their respective originals.

PRAYER

This Hon'ble Court may be pleased to issue a Writ of Mandamus or any other appropriate writ, order or direction under Article 32 of the Constitution:

- i) Directing the Respondents to formulate uniform education policy in every state in order to curb the discriminatory practices adopted during Covid-19 crisis and to ensure participation of all children including children belonging to weaker section of society with regard to imparting elementary education during Covid-19 crisis, and
- ii) Directing the Respondents for formulation of uniform policies on state level for both Government and private schools regarding mode of education with a view to minimize the digital divide being created by the education practices followed by various states and Union Territories, and

- iii) Directing the Respondents for formulation of alternative strategies keeping in mind the children who are unable to access or benefit from Online Education or e-learning programme, and
- iv) Directing the Respondents to focus on radio education programmes on an urgent basis in order to enable the children belonging to disadvantaged group to stay in touch with educational programmes being run by the governments, and
- v) Directing the Respondents for formulations of special policies/ guidelines to encourage students affected by reverse migration who are prone to drop out of school, and
- vi) Directing the Respondents to set up a committee in each district consisting of officials from education department and local volunteers to identify children affected due to reverse migration and to enroll them in government schools depending upon their abilities and learning skills, and
- vii) Directing the Respondents to formulate policies in order to permit children of Migrant Labourer to take admission in nearby schools even without required documents including mark sheets, Provisional certificates, Character certificates as well as School leaving certificate/ Transfer Certificate, and
- viii) Directing the Respondents to formulate special policies focussing on ways for imparting education to Children with disabilities and covered under Rights of Persons with Disabilities Act, 2016, and
- ix) Directing the Respondents to constitute Committee of experts from all concerned streams like education, policy making, medicine,

health etc. to advise the appropriate governments regarding time line for reopening of schools and related issues.

- x) Directing the Respondents to cautiously formulate policies prescribing uniform measures to be implemented regarding opening up of schools, time lines for opening of schools and measures to be followed when schools are opened within a state, and
- xi) Directing the Respondents to prepare revised/reduced curriculum/syllabus for the current academic session, keeping in mind the academic year already lost due to closure of schools, and
- xii) Pass such further or other order(s), as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and in the interests of justice.

**AND FOR THIS ACT OF KINDNESS THE PETITIONER SHALL
IN DUTY BOUND EVER PRAY.**

Filed by

**DEEPAK PRAKASH
ADVOCATE FOR THE PETITIONER**

Drawn on: 22.07.2020

Filed on: 24.07.2020

Place: New Delhi

