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Balancing the Right to Life and Right to Education during Covid-19 Pandemic in India

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ABSTRACT

This research paper delves into the critical issue of balancing the fundamental human rights to life and education within the context of pandemics in India. Through a doctrinal analysis of relevant legal frameworks and policies, this paper aims to elucidate the challenges and opportunities in upholding both rights during health crises. The research objectives encompass examining the impact of pandemics on the right to life and education in India, evaluating existing strategies and policies in managing this balance, and proposing doctrinally sound recommendations for effective policymaking. The research questions focus on understanding the legal and policy landscape governing the right to life and education in India during pandemics, identifying jurisprudential principles guiding decision-making in balancing these rights, and exploring doctrinal methodologies for addressing the inherent tensions.

Keywords: *Balancing, Right to Life, Right to Education, Pandemic, India.*

I. INTRODUCTION

The COVID-19 pandemic has underscored the challenging task of balancing two fundamental human rights during a global crisis: the right to public health and the right to education. Both of these rights are enshrined in various international human rights treaties.³ The International Covenant on Economic, Social and Cultural Rights (ICESCR), which has been signed and ratified by the majority of countries, affirms that every individual is entitled to mental and physical health.⁴ It obligates state parties to implement crucial measures for the protection, treatment, control, and prevention of epidemics, as well as other occupational and life-threatening diseases.⁵ On the other hand, the right to education is also universally recognized as a fundamental human right. Most nations around the globe acknowledge its importance and

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³ Article 4 of International covenant on civil and political rights, 1966; Articles 12 and 13(2) International covenant on economic, social and cultural rights, 1966; Article 28 of Convention on the rights of child, 1989.

⁴ Article 12 (1) of International covenant on economic, social and cultural rights, 1966.

⁵ Article 12 (2) (C) of International covenant on economic, social and cultural rights, 1966.

strive to ensure access to education for all. The COVID-19 pandemic, which still lingers globally, has had a profound impact on countries around the world. The pandemic has not only led to the collapse of the global economy, causing immense losses across all sectors, but it has also created significant disruptions in the education system. This disruption is unprecedented in history, affecting approximately 1.6 billion students in over 190 countries, which accounts for 94 percent of the world's student population.⁶

The primary reason for the closure of schools and other educational institutions was to contain the spread of the virus and to safeguard the basic human right to life. Protecting the lives of citizens is a fundamental duty of every nation. India, being the second most affected country after the United States, experienced prolonged school closures compared to many other countries.⁷ To mitigate the impact of the pandemic on education, India, like many other nations, transitioned to distance learning through the use of technology. However, the lack of resources made it difficult for every student to participate in online education. In India, a significant portion of the population lacks access to the internet and the necessary devices for online learning. This digital divide resulted in many students, particularly those in school, suffering academic setbacks. These students faced greater challenges in adapting to distance learning and, as a result, were unable to receive proper online education. The Committee on Economic, Social and Cultural Rights (CESCR), which monitors the implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966, has emphasized that the right to health is interconnected with other human rights.⁸ These rights, as outlined in the International Bill of Human Rights, include the right to work, education, food, human dignity, equality, life, non-discrimination, privacy, access to information, and the freedoms of movement, association, and assembly. These rights are essential components of the right to health.⁹ International human rights law obligates state parties to respect all human rights, even during emergencies, ensuring that no individual is subjected to discrimination. Countries that have ratified human rights treaties guaranteeing the right to education are required to uphold this right for every child without any form of discrimination. The sudden shift to remote learning across the globe during the pandemic laid bare the deep-seated disparities in educational access and quality, especially in countries like India, where socio-economic inequalities are

⁶ United Nations “Policy brief: Education during Covid-19 and beyond” (August 2020).

⁷ Mehr Kalra and Shivakumar Jolad, “Regression in Learning: The High Cost of COVID-19 for India’s Children”, ORF Issue Brief No. 484, August 2021, Observer Research Foundation, available at: https://www.orfonline.org/wp-content/uploads/2021/08/ORF_IssueBrief_484_Covid-Education.pdf (visited on 19 April 2024).

⁸ Human rights watch “Human rights dimensions of Covid-19 response” available at: <https://www.hrw.org/news/2020/03/19/human-rights-dimensions-covid-19-response> (visited on 19 April 2024).

⁹ Ibid

pronounced. The digital divide emerged as a significant hurdle, with unequal access to technology and the internet hindering effective education for many students. Urban areas, with their better infrastructure, managed to adapt somewhat to online learning, but rural regions faced daunting challenges. Many students in these areas lacked essential tools such as computers, stable internet connections, and a supportive home learning environment.

Prolonged school closures also took a toll on the psychological and social well-being of students. The disruption of daily routines led to increased feelings of anxiety, stress, and isolation among children. Schools serve as more than just centers for academic learning; they are crucial for providing social support and mental health services, which are vital for the overall development of children. The absence of these support systems during the pandemic underscored the critical role that educational institutions play beyond academics.

The pandemic further widened existing inequalities. Vulnerable groups, including children from low-income families, children with disabilities, and girls, were disproportionately affected. Girls, in particular, faced heightened risks of dropping out due to economic pressures and increased domestic responsibilities. The interruption in education for these groups threatens to reverse years of progress in educational attainment and gender equality. In response to these challenges, the Indian government and various non-governmental organizations implemented several initiatives to support students. Efforts included distributing digital devices, establishing community learning centres, and broadcasting educational content through television and radio. While these measures provided some relief, they were not sufficient to fully close the educational gap created by the pandemic. The crisis also spurred educational institutions to explore innovative teaching methods and pedagogical approaches. There was a marked increase in the use of digital tools and platforms, ushering in a new era of blended learning. Although this shift was driven by necessity, it holds the potential to transform traditional teaching methods and make education more accessible and engaging in the long run. Moreover, the pandemic underscored the need for a resilient education system capable of withstanding such disruptions in the future. This means not only being technologically prepared but also developing flexible curricula and teaching strategies that can adapt to changing circumstances. Policymakers are now more aware of the importance of investing in the education sector to build a robust infrastructure that ensures continuity of learning during emergencies. The intersection of the right to health and the right to education during the COVID-19 pandemic offers crucial insights into how societies can better prepare for and manage such crises. Balancing health measures with the need to maintain educational access requires a holistic approach that considers the broader impacts on children's development and well-being. This research paper aims to explore

the multifaceted implications of the pandemic on education in India, examining how the balance between maintaining public health and ensuring educational continuity was managed. It will analyse policy responses, the effectiveness of various educational strategies, and the lessons learned from this unprecedented disruption. Drawing on the experiences of the past few years, the paper seeks to provide recommendations for creating a more equitable and resilient education system that upholds both health and education rights in future crises.

(A) Research Objectives

1. To examine the scope of the right to life and right to education in India.
2. To analyse the effect of pandemics on the right to life and right to education in India.
3. To propose doctrinally sound recommendations for effectively managing the balance between the right to life and education amidst pandemics in India.

(B) Research Questions

1. What legal and policy frameworks govern the right to life and right to education in India?
2. What is the effect of pandemics on right to life and right to education in India.
3. What doctrinal methodologies can be employed to reconcile the tensions between the right to life and education amidst pandemics in India, considering the socio-legal context?

(C) Research Methodology

The doctrinal methodology will involve a comprehensive review and analysis of Indian constitutional provisions, statutory laws, and government policies relevant to the right to life and education during pandemics. Key legal documents such as the Indian Constitution, the Right to Education Act, and public health legislations will be examined to understand the legal framework governing these rights. Through this doctrinal methodology, the research aims to provide a nuanced understanding of the legal and policy landscape surrounding the right to life and education amidst pandemics in India and to offer practical recommendations for policymakers, legal practitioners, and other stakeholders.

II. SCOPE OF RIGHT TO LIFE AND RIGHT TO EDUCATION IN INDIA

(A) Right to Life

Among human social ideals, the sacredness of human life is arguably the most fundamental. It is acknowledged in globally approved declarations of human rights as well as in all civilised

cultures and their legal frameworks. Everyone has the right to live their life as they see fit, free from unjust intervention from others. Only a democracy that upholds the rights of its people to defend their own lives and liberties can be considered successful. Under Part III of the Indian Constitution people of India are entitled to the protection of their life and personal liberty. These Fundamental Rights serve as a symbol of the core values upheld by the populace and are awarded as a safeguard against governmental action. This means that no act by any state authority may infringe upon a citizen's fundamental right unless doing so would require following the legal process. The Right to Life and Personal Liberty is protected by Article 21 of Indian Constitution, which says that "No person shall be deprived of his life or personal liberty except according to the procedure established by law." Prior to being integrated into the Indian Constitution, the concept of protecting the right to life and individual liberty was well-known to those who drafted it. In actuality, the US Constitution (1791) and the English Magna Carta (1215) both acknowledge this idea far sooner. Following its reiteration in England's Petition of Rights in 1628, the UK's Rule of Law has been formed by adherence to this idea. 'Due process of law' is another term that the Americans seem to have appropriated from a 14th-century legislation. But in contrast to the "due process of law" used in United States of America, the phrase "law of the land" as used in England. This idea was first acknowledged on a larger, global scale in the 1948 Universal Declaration of Human Rights. "Everyone has the right to life, liberty, and security of person," states Article 3 of the Declaration. "No one shall be subjected to arbitrary arrest, detention, or exile," states Article 9 further. The European Convention on Human Rights (1950)¹⁰ and the Covenant on Civil and Political Rights (1966)¹¹ both place a heavy emphasis on this right. These international treaties identify the subsidiary rights in considerable detail, even as they guarantee the particular rights to life and personal liberty. Despite its negative tone, Article 21 grants everyone, even foreigners, the basic right to life and personal liberty, and courts have deemed these two rights to be of utmost significance. Because these rights are fundamentally superior to all other aspects of the political and social order, the legislative, executive, and judicial branches are more attentive to these rights than to other aspects of day-to-day life. Additionally, although though the term "person" refers to an individual, Article 21 of the constitution also establishes the enforcement of the people's collective rights through "Public Interest Litigation" under Articles 32 and 226. The "literal interpretation" confined the first application of Article 21. However, by "liberal

¹⁰ Article 2 of European Convention on Human Rights states that "Everybody's right to life must be upheld by the law. Nobody may be purposefully taken from life unless a judge orders their execution after they are found guilty of a crime for which a legal punishment exists".

¹¹ Article 6 Of ICCPR states that "Every person has the inalienable right to life. The law will uphold this right. Nobody's life may be taken from them without cause".

interpretation" of the article's provisions in accordance with pertinent international understanding, the Article's area of applicability has grown over time.

Judiciary in India is playing a crucial role in the protection of the right to life of the people from time and again by expanding the scope of the rights and recognizing new rights with the need of time. Judiciary has expanded the scope of right to life to include entitlements which are vital for the enjoyment of right to life with dignity.¹² Courts have protected right of the people in numerous cases whether it is a right against violence in custody,¹³ to live in a pollution free environment,¹⁴ right to health,¹⁵ right to adequate wages of the workers, safety of the women at workplace,¹⁶ compensation to rape victim and rights of the child labourers¹⁷ and so on.

(B) Right to Education

In several regional and international human rights documents, the right to education has been acknowledged as a crucial human right.¹⁸ "Education is that weapon which can be used to change the world," remarked Nelson Mandela, one of the greatest social reformers the world has ever seen.¹⁹ The right to education is a tool that empowers individuals to assert their other civil, political, social, and economic rights as well as to speak out against governmental violations of human rights. State parties have a responsibility to without bias, advance and defend the right to education under their national laws.²⁰ India, a democratic nation, has ratified a number of international human rights treaties that identify the right to education as a fundamental human right.²¹ Article 21-A of the Indian Constitution recognises the right to

¹² *Maneka Gandhi v Union of India* 1978 SCR (2) 621

¹³ *Nilabati Bahera v State of Orissa* 1993, *D.K.BASU V State of West Bengal* 1997, *Sunil Batra v Delhi adminstartion* AIR 1978 SC 1675.

¹⁴ *M.C. Mehta v Union of India* (2006) 3 SCC 399

¹⁵ *State of Punjab V M.S. Chawla* AIR 1997 SC 1225

¹⁶ *Vishaka v State of Rajasthan* 1997(6) SCC 241, *Medha Kotwal Lele v Union of India* 2013(1) SCC 297.

¹⁷ *Labourers working on Salal project v State of Jammu and Kashmir* AIR 1984 SC 117, *People's Union for Civil Liberties (PUCL) v Union of India* 1998 (8) SCC 485

¹⁸ Articles 13 and 14 of international covenant on economic, social and cultural rights, 1966; Article 26 of Universal Declaration on Human Rights, 1948; Article 28 of the Convention on the rights of child, 1989; Article 10 of the convention on the elimination of all forms of discrimination against women, 1979; Article 12 of the American Declaration of the Rights and Duties of Man; Articles 14 and 15 of the European Convention on the Legal Status of Migrant Workers; Article 17 of the African Charter on Human and Peoples Rights

¹⁹ Mamta Viswanath, "Right to Education Using Human Rights Based Approach: A Policy Perspective For India" 19 *Journal of Humanities and Social Science* 46-54 (2014).

²⁰ "States Parties are bound to ensure and respect the rights guaranteed under the present Covenant to every child within their jurisdiction without any discrimination, irrespective of the child's or her or his parent's religion, sex," states Article 2 (1) of the Convention on the Rights of the Child, 1989. Ethnic origin, race, language, political opinion, and colour; "State parties to the present covenant are bound to implement the rights guaranteed under present covenant without any kind of discrimination as to religion, place of birth, language, race, political opinion, and colour," states Article 2(2) of the International Covenant on Economic, Social, and Cultural Rights, 1966.

²¹ India has ratified international covenant on economic, social and cultural rights, 1966 on 10 April, 1979, Convention on the rights of child, 1989 on 11 December 1992, convention on the elimination of all forms of discrimination against women, 1979 on 9 July 1993.

education as a basic right.²²In India, the State is obligated to offer free and compulsory education to children between the ages of six and fourteen. In India the right to elementary education is also a legislative entitlement.²³ Approximately 120 million children in India are enrolled in the Midday Meal Scheme, which offers free meals to enrolled government school students for one meal per day. This programme actively motivates children to attend school and receive an education. The children range in age from 6 to 14 years old. As the guardian of basic rights, the Indian judiciary has always worked to advance and defend the right to education.²⁴ There is cause for concern that a large proportion of children in India do not attend school, even in spite of the government's sincere attempts to provide universal education. To amplify the significance of the right to education in India, let me say that it is essential to the advancement of society, the economy, and the realisation of each person's potential. India can effectively solve its social and economic difficulties, promote inclusive growth, and enable its residents to make significant contributions to the country's development by guaranteeing that all citizens have access to high-quality education. Furthermore, education has a critical role in ending the cycle of inequality and poverty. It gives people the information, talents, and skills they need to enhance their socioeconomic standing and get better jobs. Furthermore, educated people are more inclined to support their rights, actively engage in democratic processes, and make beneficial contributions to their communities. In addition, empowering women and girls and advancing gender equality depend heavily on the right to education. Girls who have access to school are more equipped to challenge gender norms, seek further education and job goals, and make wise decisions for their own life. Long-term economic gains come from investing in education because it develops a skilled labour force, encourages entrepreneurship and creativity, and advances technology. Attracting international investment, promoting economic growth, and boosting global competitiveness all depend on having a well-educated populace. In conclusion, India's path to social fairness, economic growth, and national progress depends on the right to an education. Through the prioritisation of education and the guarantee of its universal accessibility and excellence, India can unleash the potential of its people and create a more promising and just future.

²² Article 21-A was inserted in India Constitution by way of 86th Amendment Act, 2002, which guarantees free and compulsory elementary education.

²³ The Right of Children to Free and Compulsory Education, Act, 2009.

²⁴ *Mohini jain v State of Karnataka* AIR 1992 SC 1858; *Unni Krishnan v State of Andhra Pradesh* 1993.

III. EFFECT OF COVID-19 PANDEMIC ON RIGHT TO LIFE AND RIGHT TO EDUCATION IN INDIA

Worldwide, the Covid-19 epidemic has had a severe impact on everyone. The World Health Organisation proclaimed the Covid-19 pandemic on March 11, 2020, and urged nations to take the required action to halt the disease's continued spread. State parties are required by international human rights law to defend the right to health of citizens and other individuals residing on their territory.²⁵ Furthermore, State parties are required to take appropriate action to prevent and cure epidemics and other occupational diseases, as well as to safeguard their people and other residents from these illnesses. In addition, the 58th World Health Assembly enacted International Health Regulations in May 2005 with the aim of preventing and controlling the spread of illnesses on a global scale. States are required by these standards to uphold people's dignity, basic freedoms, and human rights.²⁶ Nearly every nation in the globe implemented lockdowns and limited travel during the first and second waves of COVID-19 these measures were primarily implemented to stop the spread of the deadly virus within communities. The COVID-19 pandemic has had a significant impact on India, with an estimated 5.4 lakh deaths and 4.9 million direct cases. In India, the right to health is a basic right, and both the federal and state governments are required to uphold this vital freedom.²⁷ Using the Disaster Management Act of 2005, the Ministry of Home Affairs designated COVID-19 a disaster on March 14, 2022, and on March 24, 2022, it issued an order imposing national lockdown. The Disaster Management Act of 2005 was enacted to manage catastrophes and related issues in an efficient manner.²⁸ The COVID-19 pandemic has had a disastrous effect on society owing to its direct and indirect implications on individual's human rights in addition to its negative consequences on health and the economy. The epidemic has specifically had a number of detrimental repercussions on citizens' rights to integrity. The UN body working on gender equality, UN Women, coined the term "shadow pandemic" to refer to the severe intensification of all forms of violence against women and girls that occurred during the pandemic, particularly domestic violence, because lockdown measures adopted by governments to manage the pandemic frequently resulted in increased levels of violence against women and girls.²⁹ The right to life in India was significantly and in many ways impacted by the COVID-19 epidemic. This right,

²⁵ Article 12 of International Covenant on Economic, Social and Cultural Rights, 1966.

²⁶ Article 3 (1) of International Health Regulations, 2005.

²⁷ *State of Punjab v Mohinder Singh Chawla* (1997) 2 SCC 83.

²⁸ Preamble of the Disaster Management Act, 2005.

²⁹ Carraro, V. The effects of the COVID-19 pandemic on violations of the right to integrity of the person. *Int J Humanitarian Action* 5 (2024).

which is guaranteed by Article 21 of the Indian Constitution, protects one's life and liberty.³⁰ India's healthcare system was overtaken by the rapid emergence of COVID-19, which resulted in a lack of hospital beds, medical oxygen, ventilators, and necessary pharmaceuticals. The right to life was directly harmed by this, since many people were unable to obtain timely or sufficient medical treatment. The disparities in access to healthcare were glaringly apparent, with marginalised and rural communities encountering more difficulties in getting care. Lockdowns across the country, undertaken to curb the virus's spread, severely disrupted the economy. Millions of people lost their employment, especially in India's large informal sector, which accounts for a large amount of the country's GDP. Many individuals experienced economic challenges that led them into poverty, escalating food insecurity and malnutrition, which in turn jeopardised people's health and well-being and indirectly endangered their right to life. The predicament of migrant labourers brought important human rights problems to light. Many deaths from weariness, accidents, and lack of basic requirements resulted from mass migrations, frequently on foot, back to home towns.

The COVID pandemic highlighted the difficulty of striking a balance between two rights that conflict: the right to education and the right to public health, both of which are protected by the Indian Constitution.³¹ It goes without saying that government planning and policy have placed a high priority on the healthcare system. Not only did the pandemic cause a public health emergency, but it also caused chaos in the country's educational system. Despite the "fundamental right to education" that India claims for its citizens, total school closures have prevented students from receiving an education from the start of the countrywide lockdown. "Indian schools had been closed for the longest duration after Uganda," according to UNESCO.³² The implementation of the Right to Education (RTE) in India has been significantly impacted by the COVID-19 affecting several facets of the educational environment. The widespread shutdown of schools in an effort to stop the virus's spread has been one of the most noticeable and immediate repercussions. Millions of students across have been impacted by this abrupt disruption to in-person instruction, which has jeopardised their right to an education and disrupted their continuity in their education. The education system had to quickly adjust to remote learning modalities while schools were closed. While some saw online schooling as a viable option, it also made the stark realities of India's digital divide clear.

³⁰ Article 21 of Indian Constitution states that "No person shall be deprived of his life and personal liberty except the procedure established by law."

³¹ Article 21-A and Article 21 of Indian Constitution.

³² "After Uganda, Indian schools shut for longest time: UNESCO" <https://timesofindia.indiatimes.com/india/after-uganda-indian-schools-shut-for-longest-timeunesco/articleshow/90211031.cms> (accessed on 20 May 2024).

India relied on the internet for ongoing education during the pandemic, much as other countries. Unfortunately, due to the lack of internet most schools, instructors, and kids have found it challenging to participate in online classes. Only 18.3% of rural students enrolled in government schools have access to video recordings, and 8.1 percent have participated in live online lessons, according to research.³³ Higher education establishments were also impacted by the epidemic. The government and the Universities Grant Commission made the decision to close all schools and institutions. Existing educational disparities have been made worse by this digital divide, which has marginalised already disadvantaged groups and made it more difficult for them to get high-quality education. Concerns have also been raised about the quality of distance learning. The abrupt transition to online learning left schools and teachers unprepared, making it difficult to engage students in virtual classrooms and successfully deliver curricular information. Students had wildly different learning experiences as a result, and differences in teacher support and resource availability exacerbated already existing educational gaps.

IV. CONCLUSION AND SUGGESTIONS

Fundamental rights including the right to life and the right to education have been disturbed by the worldwide calamity known as the COVID-19 epidemic. A careful balancing act was needed in India in response to this interruption. The school system was greatly influenced by the public health precautions, notwithstanding their importance. Relocating to a faraway location made already existing disparities more apparent, especially for underprivileged students who had trouble obtaining online education. The necessity for a robust educational infrastructure that can respond to emergencies and guarantee that each child receives a top-notch education has been brought to light by the epidemic. It has also underlined how important it is for schools to give kids social support, wholesome food, and a secure atmosphere in addition to academic education. The worldwide education system has been severely disrupted by the COVID-19 epidemic, revealing its flaws and disparities. Even with efforts to continue education via distant learning, many students especially those from economically disadvantaged backgrounds were unable to benefit from this strategy because they lacked access to digital technologies. Years to come will see the effects of the educational losses brought on by the epidemic. The situation has highlighted how difficult it is to strike a balance between the need to protect public health and the right to education, both of which are essential human rights recognised by international law.

³³ Mehr Kalra and Shivakumar Jolad, "Regression in Learning: The High Cost of COVID-19 for India Children", Observer Research Foundation, available at https://www.orfonline.org/wpcontent/uploads/2021/08/ORF_IssueBrief_484_CovidEducation.pdf (accessed on 20 May 2024).

In order to effectively tackle the COVID-19 epidemic and maintain a balance between the rights to education and life in India, a number of strategic measures might be implemented.

Improving internet infrastructure is essential, to start. In order to guarantee that all students have access to online education, a substantial investment in increasing internet connectivity throughout all areas is required. The building of this infrastructure can be sped up by public-private partnerships. Furthermore, one way to close the digital gap is by giving students especially those from low-income families accessible, cheap digital gadgets. In order to make these gadgets accessible, government programmes and subsidies may be essential.

Policies for inclusive education are also crucial. It is essential to implement focused assistance programmes to assist pupils who have fallen behind as a result of the epidemic. To guarantee that every student can meet the same academic requirements, this may need remedial instruction, tutoring, and catch-up courses. Supporting students from underrepresented groups, such as those with impairments, requires extra work. Additional educational support and individualised learning resources can help guarantee that these children don't fall behind.

Resilience and flexibility in education may be achieved by implementing hybrid learning approaches. Learning continuity may be ensured even in the face of disruptions using a blended learning method that blends online and offline instruction to meet a variety of requirements and conditions. In order to give them the tools necessary for successful instruction in both online and offline contexts, educators should pursue continual professional development.

Prioritising mental health and well-being is important. Counselling services and other comprehensive mental health assistance should be provided by schools to assist pupils in overcoming the stress and difficulties that the epidemic has brought about. By including parents and mental health specialists in the school community, a supportive atmosphere that attends to children' total well-being may be established.

Sustaining health and nutrition regimens is essential. It is crucial to maintain access to nutritional assistance, such as midday meal programmes, even while schools are closed. Direct benefit transfers or community distribution methods can be used to accomplish this. Education on cleanliness and health can be incorporated into the curriculum to raise knowledge of general health practices and illness prevention.

By putting these tactics into practice, India can create a more robust educational system that protects children's rights to life and education and makes sure that all children, no matter what their circumstances, have the chance to study and grow.
