

**INTERNATIONAL JOURNAL OF LAW**  
**MANAGEMENT & HUMANITIES**

**[ISSN 2581-5369]**

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**Volume 4 | Issue 4**

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**2021**

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# Children and the National Education Emergency: A Psycho-Legal Perspective

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## ABSTRACT

*Mental wellbeing of children depends greatly on the ability to have valuable experiences during their formative years. With the advent of the Covid-19 virus last year, the formidable circumstances of online education have come to surface. The aim of the article is to shed light on the psychological impact of children due to lack of access to education in times of lockdown, alongside highlighting the state's obligations towards making education available from a legal viewpoint. The authors have collated stats around the current scenario in the country indicating towards deprivation of basic opportunities for children. Isolating at home and quarantine during the course of the pandemic were found to be interlinked with psychological disturbances in children. The shift of education to an online mode has reiterated the need to view students' welfare through a well-rounded lens. It is essential to take note of the fundamental rights of the young children and the duty of the state to provide required assistance to aid their education and health, as prescribed by the Indian Constitution. There are also accompanying predisposing factors like undernutrition, existing disabilities and lack of infrastructure that contribute to the high likelihood of the hardships of children. Towards the end of the article, few recommendations have been enlisted that may prove to be conducive in providing psychological support to children during these unprecedented times, and the various schemes launched by the government to provide access to quality online education to the students.*

**Keywords:** Children, Online Schooling, Psychological Impact, State's Obligation.

## I. INTRODUCTION

India in the 21st Century has seen an enviable growth in the technology sector, and New Delhi is aspiring to become a global technology hub in the coming future. Indian city of Bengaluru has also achieved the feat of becoming world's fastest growing tech-hub since 2016.<sup>3</sup> However,

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<sup>3</sup> PTI, *Bengaluru world's fastest growing tech hub*, London second: Report, The Economic Times (Aug. 11, 2021, 1:17 AM), Bengaluru tech hub: Bengaluru world's fastest growing tech hub, London second: Report - The Economic Times (indiatimes.com).

the hidden cracks in the technological edifice of the country have been exposed by the global pandemic. When the world has gone 'online', India has become a "backbencher" in the education sector due to the technological divide in the society,<sup>4</sup> at both household and individual level. It is noteworthy that according to the National Household Social Consumption on Education in India (2017-18) survey, only 23.8% households in India had access to internet facilities and that only 20.1% of people were able to use the internet.<sup>5</sup> It will be unbecoming to expect a significant change in the statistics in the last 4 years, which is especially a cause of concern given the current circumstances. Presently, where the schools have 'shifted' online, the technological gap between varied stratas of the society have seem to widen. According to the National Sample Survey Organisation there are 3.22 crore children (between 6-17 years) who are "out of school",<sup>6</sup> and the numbers will only rise due to financial constraints caused by the pandemic.<sup>7</sup> The United Nations has warned that approximately 24 million students could drop out from school globally and has termed that the world is facing a "global education emergency" due to the pandemic.<sup>8</sup> However, in these challenging times it not only becomes critical that the state assures access to education to children, but also that emphasis be put on their mental and physical wellbeing. The article delves into understanding the psychological impact of pandemic and deprivation of access to education. Further, authors also highlight the responsibility of the state in ascertaining access to quality education to the children during the pandemic and providing respectable healthcare to children.

## II. PSYCHOLOGICAL IMPACT OF LACK OF EDUCATION

Mankind has been exposed to a consequential transformation brought about by the outbreak of the COVID-19 virus last year. The pandemic has put forth various hazardous physical conditions in the lives of individuals globally. The citizens of India are no exception to the widespread health hazards of the lethal COVID-19 virus that has indiscriminately affected all age groups. The affected population also comprises millions of children who faced this abrupt shift and experienced social isolation in the form of continual lockdowns. Along with the

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<sup>4</sup> Aparajitha Narayanan, India: A Backbencher in the Education Sector During COVID-19, *OpinioJuris* (Aug. 11, 2021, 1:20 AM), India: A Backbencher in the Education Sector During COVID-19 - *Opinio Juris*.

<sup>5</sup> National Statistical Office, *Household Social Consumption on Education in India*, NSS Report No. 585(75/25.2/1), Report\_585\_75th\_round\_Education\_final\_1507\_0.pdf (mospi.nic.in).

<sup>6</sup> Dr. Anuja, *Dropout of students engender huge ramifications in social progress of new India*, *The Times of India* (Aug. 11, 2021, 1:32 AM), *Dropout of students engender huge ramifications in social progress of new India* (indiatimes.com).

<sup>7</sup> S Seethalakshmi, *Out-of-school children likely to double in India due to coronavirus*, *Live Mint* (Aug. 11, 2021, 1:35 AM), *Out-of-school children likely to double in India due to coronavirus* (livemint.com).

<sup>8</sup> Will Feuer, *At least 24 million students could drop out of school due to the coronavirus pandemic, UN says*, *CNBC* (Aug. 11, 2021, 1:39 AM), *At least 24 million students could drop out of school due to the coronavirus pandemic, UN says* (cnbc.com).

broadly canvassed physical impact of the pandemic on children, there are also less divulged mental health repercussions on children who have been isolated at home. With the shift of daily activities being restricted inside the homes, the entire educational system took the path of online learning for the ease of transacting school activities. The diverse educational opportunities during the school years have been well established as a crucial milestone for development of children and adolescents in their life span. Individuals with low levels of educational attainment find it far more difficult to build a strong social identity in today's day and age.<sup>9</sup> This can have a detrimental effect on one's self-esteem and well-being. Research shows that when children are not in school, they are much less physically fit, have unpredictable sleep patterns, and eat less healthy food, leading in weight increase and cardiorespiratory fitness loss.<sup>10</sup> For young individuals with existing mental health concerns, school routines are helpful coping techniques. They lose their foothold in life when schools close, and their symptoms may recur.<sup>11</sup>

While understanding the possible consequences of absence of education in children, it is also essential to examine that there are a large number of them that are deprived of this opportunity due to societal constraints. According to a survey conducted by Social & Rural Institute Research there are estimate, 60.41 lakh children (between 6-13 years)<sup>12</sup> who were out of school prior to the pandemic, with most of them falling in the nation's socially disadvantaged strata. Alongside already existing systemic and oppressive issues pertaining to the marginalised communities being carried through generations, the lack of educational exposure due to the shift in modalities has been an additional life stressor in the lives of millions of students. Recently, a 14-year-old girl died by suicide in Kerala due to a lack of access to online schooling.<sup>13</sup> This highlights the shortcoming of the Indian school system and the impact it has on the mental health of young children. Free education is quite often an impenetrable battle than a birth right for girls from the marginalised castes, let alone spending on buying the required equipment to attend online classes. While talking about the dearth of educational possibilities for children during the pandemic, Gupta & Jawanda (2020) have described the combination of school closures and child poverty as a 'social crisis' in the making.<sup>14</sup>

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<sup>9</sup> Economic & Social Research Council, *The wellbeing effect of education*, Evidence Briefing,

<https://escr.ukri.org/files/news-events-and-publications/evidence-briefings/the-wellbeing-effect-of-education/>.

<sup>10</sup> Guanghai Wang et al., *Mitigate the effects of home confinement on children during the COVID-19 outbreak*, 395 *The Lancet- Correspondence* 945, (2020).

<sup>11</sup> Joyce Lee, *Mental health effects of school closures during COVID-19*, 4 *The Lancet- Reflection* 421, (2020).

<sup>12</sup> Social & Rural Research Institute, *National Sample Survey of Estimation of Out-of-School Children in the Age 6-13 in India*, National-Survey-Estimation-School-Children-Draft-Report.pdf (education.gov.in).

<sup>13</sup> Aditi Murti, *A 14-Year Old Girl's Suicide Reveals How Lockdown Will Widen the Education Gap Among Children*, *The Swaddle* (Aug. 11, 2021, 3:03 AM), Kerala Student Dies By Suicide Due To No Access To Online Education | *The Swaddle*

<sup>14</sup> Sonia Gupta & Manveen Kaur Jawanda, *The impacts of COVID-19 on children*, 109 *Acta Paediatrica* 2181,

Children typically spend a significant period of time away from home during middle childhood, which allows their social circle to expand with peers and teachers.<sup>15</sup> The long duration of time spent away from school and classmates is bound to cause many behavioural and psychological dysfunctions among children. Some of the typically prevalent psychological concerns such as anxiety, depression, anger, mood changes, lack of attention, and sleep disturbances in quarantined children have been enlisted by.<sup>16</sup> Another study indicated that children who had already been quarantined had 4 times higher mean post-traumatic stress scores than children who haven't been isolated.<sup>17</sup>

An essential aspect of schooling accompanies the feeling of togetherness and belongingness that children experience as a result of being a part of a larger community. As Gupta and Jawanda (2020) state, schools offer socialising and competitive activities which many children relish, and engaging with children from diverse backgrounds helps them adjust to varied surroundings and create social bonds, which has been curbed due to the lockdown.<sup>18</sup>

More so the sudden discontinuance of mid-day meals and additional nutrition programmes was one of the most significant impacts of the lockdown and consequent school closures. The lockdown in India has already disrupted school feeding programmes, increasing food insecurity, especially for all those who are already malnourished.<sup>19</sup> Undernutrition has an impact on cognitive and motor development of children, as well as educational achievement, which has an influence on job and household productivity.<sup>20</sup>

Since last year, there has been an intellectual overload on children to process the constant changes occurring both around and within them which might have serious repercussions. Furthermore, it is undeniable that these unprecedented times have posed greater risk to the disabled children, children living with existing mental illness as well as children from the underserved spaces due to already prevailing stressors in their lives.

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2181-2182 (2020).

<sup>15</sup> Marco Del Giudice, *Attachment in Middle Childhood: An Evolutionary–Developmental Perspective*, 148 *Attachment in middle childhood: Theoretical advances and new directions in an emerging field* 15, (2015).

<sup>16</sup> Prateek Kumar Panda et al., *Psychological and Behavioral Impact of Lockdown and Quarantine Measures for COVID-19 Pandemic on Children, Adolescents and Caregivers: A Systematic Review and Meta-Analysis*, 67 *Journal of Tropical Pediatrics*, (2020).

<sup>17</sup> Kumar Saurabh & Shilpi Ranjan, *Compliance and Psychological Impact of Quarantine in Children and Adolescents due to Covid-19 Pandemic*, 87 *The Indian Journal of Pediatrics* 532, 535 (2020).

<sup>18</sup> *Supra* note 14.

<sup>19</sup> Muzna Alvi & Manavi Gupta, *Learning in times of lockdown: how Covid-19 is affecting education and food security in India*, 12 *Food Security* 793, (2020).

<sup>20</sup> Kavindra Kumar Kesari et al., *Effect of Undernutrition on Cognitive Development of Children*, 3 *International Journal of Food, Nutrition and Public Health* 133, (2010).

### III. RESPONSIBILITY OF THE STATE TO PROVIDE EDUCATION

The negative impact of absence or non-access to schools and online classes is indisputable. Even though the pandemic has caused unprecedented circumstances, the state can't abdicate from its duty to provide education to children, thus concomitantly they're duty bound to provide means to access it as well.<sup>21</sup> Right to education is a fundamental right under Article 21A of the Indian Constitution, and there is a positive obligation on the state to provide children from six to fourteen years of age with free and compulsory education. Further, under Part IV of the Constitution, the Directive Principles of State Policy also mention about the state's fundamental duty to provide early childhood care and education to children below the age of 6 years;<sup>22</sup> state's onus to make effective provisions for securing the right to education in certain circumstances;<sup>23</sup> duty of the state to specially look after the promotion of educational interests of Scheduled castes, scheduled tribes and other weaker sections.<sup>24</sup> Under Article 51A(k), it is the fundamental duty of a parent or guardian to "provide opportunities for education to his child". However, it will be incongruent on the part of the government to bestow complete responsibility upon them to get their wards' gadgets specially to attend classes, when millions have lost their livelihood and are struggling to meet even their basic needs.

Moreover, according to Section 3(2) of The Right of Children to Free and Compulsory Education Act, 2009 (RTE Act),<sup>25</sup> "no child shall be liable to *pay any kind of fee or charges or expenses* (emphasis added) which may prevent him or her from pursuing and completing the elementary education", thus it is the responsibility of the state to bear such additional expenses on gadgets. Additionally, under Section 8 of the RTE Act, the parliament enforces a mandatory duty upon the appropriate government to provide free and compulsory education to every child, and ensure regular attendance and completion of elementary education. Also, it is pertinent to note that under Section 8(d), the appropriate government is liable to "provide infrastructure including school building, teaching staff and *learning equipment* (emphasis added)", thus under present circumstances "learning equipment" is analogous to electronic gadgets like mobile phones, tablets, laptops etc. Karnataka High Court recently directed the State government to provide children textbooks, notebooks and suitable technological devices and

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<sup>21</sup> Mustafa Plumber, *Ensure Access To Virtual Classes Till Physical Classes Start: Karnataka High Court To State Govt*, Live Law (Aug. 11, 2021, 4:03 AM), <https://www.livelaw.in/news-updates/karnataka-high-court-article-21-a-ensure-access-to-education-172324>.

<sup>22</sup> INDIA CONST. art. 45.

<sup>23</sup> *Id.* art. 41.

<sup>24</sup> *Id.* art. 46.

<sup>25</sup> Act enacted by the parliament to fulfil its constitutional obligation of providing free and compulsory education to children between the age of 6 to 14 years.

noted that "pandemic or no pandemic, education of children has to go on and state government has to rise to the occasion".<sup>26</sup> If the state fails to do so, it will be a violation of the RTE Act and constitutional rights of a child, and can prove to be detrimental to the future of the society. In 2020, when the Karnataka government had banned online classes from LKG to 5th standard, the Karnataka High Court had struck it down for being in violation of Article 21A of the Constitution, and had directed the government to prepare set guidelines for the online classes so that it doesn't have a negative impact on health of children.

Kerala High Court went a step further and held that Right to Education is a Human Right.<sup>27</sup> The Honourable High Court of Kerala in *T Muhammed Faisi v. State of Kerala*, also expounded the interlinkage between Right to Life and Right to Education, noting "The right to education flows directly from right to life. The right to life under Article 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education."<sup>28</sup> Thus, to deprive a child of education will be equivalent to depriving them of a dignified life.<sup>29</sup> Furthermore, under Section 8 and 9 of the RTE Act, the State and Local Authorities are also conferred with the responsibility to safeguard children with disabilities against any form of discrimination which prevents them from pursuing basic education, thus special considerations shall be made under present circumstances, to guarantee that even children with disabilities have access to online education and are not deprived of right to equality, education and dignity. Unfortunately, in India only 23.8% households have access to the internet,<sup>30</sup> however, it is quite interesting to note that the Kerala High Court in *Faheema Shirin R.K. v. State of Kerala* had upheld the right to have internet access as a critical part of Right to Education in today's technological age, and observed it to be a Human Right as well.<sup>31</sup> Hence, the government is accountable to facilitate access to information on the internet, while ensuring Right to Education. Moreover, India has also ratified Convention on the Rights of the Child (1990), thus under Article 28(a) of the said convention, the state is obligated to provide children with free and compulsory education. Additionally, the state has to also take reasonable steps to ensure

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<sup>26</sup> LiveLaw News Network, '*Pandemic Or No Pandemic, Education Of Children Must Go On*': Karnataka HC Directs State To Plan Distribution Of Textbooks, Devices, Live Law (Aug. 11, 2021, 4:11 AM), <https://www.livelaw.in/news-updates/karnataka-hc-directs-state-to-plan-distribution-of-textbooks-devices-174974?infinetescroll=1>.

<sup>27</sup> LiveLaw News Network, '*Children's Right To Education Is A Human Right: Kerala HC Directs Govt. To Sanction LP School*', Live Law (Aug. 11, 2021, 4:14 AM), <https://www.livelaw.in/news-updates/children-right-to-education-is-a-human-right-160846>.

<sup>28</sup> *T Muhammed Faisi v. State of Kerala*, WP(C). No. 8849 OF 2017(S).

<sup>29</sup> *Mohini Jain v. State of Karnataka*, 1992 SCR (3) 658.

<sup>30</sup> *Supra* note 5.

<sup>31</sup> *Faheema Shirin R.K. v. State of Kerala*, WP(C). No. 19716 of 2019(L).

regular attendance and low dropout rates.<sup>32</sup>

The Supreme Court of India *In Re* Contagion of COVID Virus in Children Protecting Homes while observing the importance of education, held that it is the duty of the States and Union Territories to ensure that there is no break in education of children who have lost their parents due to COVID-19.<sup>33</sup> Thus, it is palpable that to ensure access to education even in these pressing times is vital for the child and for the society, and a responsibility which can't be abdicated by the government.

#### **IV. PSYCHOLOGICAL IMPACT OF ONLINE CLASSES AND CHILD'S RIGHT TO HEALTH**

Even though several propitious outcomes of online learning have been highlighted, we can't overlook its impact on the mental health of children and adolescents living with disabilities. There are 7.8 million children between 0–19 years of age in India, who have a physical or mental disability, one fourth of which do not attend any educational institute.<sup>34</sup> In a country like India, this is concerning since it presently lacks physical infrastructure, accessible education, and technological solutions for the children with special needs. Considering the circumstances, children with already existing mental and physical disabilities are at the greatest risk. Due to the closure of schools, day care centres and physical therapeutic clinics, children have been kept distant from a favourable environment. Specifically, young children with Autism Spectrum Disorder (ASD) can become anxious, cranky, antsy, and acquire negative emotions due to a lack of routine and the unpredictability that comes with it.<sup>35</sup> It was also studies that children with pre-existing behavioural difficulties, such as Attention Deficit Hyperactivity Disorder (ADHD), are more susceptible to also have their behavioural and psychological symptoms worsen.<sup>36</sup>

It will be an erroneousness on the part of the government if suitable measures aren't taken for mental wellbeing of children in these tumultuous times. In the previous section, negative impact of non-access to education and excessive screen time have been noted, recently a plea in Delhi High Court has also been filed for implementation of Mental Healthcare Act, 2017 at schools and colleges due to negative impact of COVID-19 on psychological health of

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<sup>32</sup> Convention on the Rights of the Child, 1990, art. 28(e), E/CN.4/RES/1990/74.

<sup>33</sup> *In Re* Contagion of COVID Virus in Children Protecting Homes, SMW (C) No. 4 OF 2020.

<sup>34</sup> UNESCO Office New Delhi, *N for nose: state of the education report for India 2019; children with disabilities* 13 (2019), N for nose: state of the education report for India 2019; children with disabilities - UNESCO Digital Library.

<sup>35</sup> Khushboo Patel, *Mental health implications of COVID-19 on children with disabilities*, 54 Asian Journal of Psychiatry, (2020).

<sup>36</sup> *Supra* note 16.



children.<sup>37</sup> Thus, it becomes noteworthy that in India, Right to Health has been upheld to be part of Right to Life under Article 21 of the Constitution.<sup>38</sup> In *Rakesh Chandra Narayan v. State of Bihar*, the Apex court held that “In a welfare State it is the obligation of the State to provide medical attention to every citizen.”<sup>39</sup> Likewise, under Convention on the Rights of the Child, the state parties have recognised “ the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health” and that no child is deprived of healthcare services.<sup>40</sup> The State is also bound to take appropriate measures in developing preventive healthcare.<sup>41</sup> Furthermore, the State is expected to provide children with related relevant information from bona fide sources, to maintain his or her physical and mental wellbeing.<sup>42</sup> A periodic review of soundness of mental and physical health is also to be conducted of a child who has been placed by authorities for care and treatment of his or her mental health.<sup>43</sup> Hence, a strict centralised policy related to Mental Health of Children needs to be implemented at the earliest instead of advisories.

## V. CONCLUSION

The state has gone through a metamorphic transition while battling the COVID-19 virus. In these unprecedented times, there is an additional burden on the government to ensure that children aren't devoid of their fundamental right to education. While doing so, special considerations should be made for children who also face other constraints like poverty, discrimination, geographical remoteness etc. With the shift of education towards a virtual mode, it has become essential to prioritize self-care to deal with 'zoom fatigue' along with interpersonal issues that may surface as a result of isolating at home. Every child has a unique way to find meaning in their surroundings and thus their emotional needs vary too. To navigate diverse ways of dealing with the pandemic, an E-learning manual was published by National Institute of Mental Health and Neuro Sciences (NIMHANS) as a holistic guide that can be adopted to support children and adolescents. Some of the ways were stated as - building up a schedule that combines academics, painting, and indoor games; bonding with family by spending quality time; being a role model to assist youngsters manage fear and anxiety; and

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<sup>37</sup> Express News Service, *HC seeks Delhi government's response on plea alleging non-implementation of mental health law in schools and colleges*, The Indian Express (Aug. 12, 2021, 5:18 PM), <https://indianexpress.com/article/cities/delhi/hc-delhi-government-mental-health-act-7434365/>.

<sup>38</sup> *Bandhua Mukti Morcha v. Union of India*, AIR 1984 SC 802.

<sup>39</sup> *Rakesh Chandra Narayan v. State of Bihar*, 1989 AIR 348

<sup>40</sup> Convention on the Rights of the Child, 1990, art. 24(1), E/CN.4/RES/1990/74.

<sup>41</sup> *Id.* art. 24(2), cl. (f).

<sup>42</sup> *Id.* art. 17.

<sup>43</sup> *Id.* art. 25.

finally teaching them basic hygiene maintenance routine.<sup>44</sup>

On a community level, the government can use the method of targeted funding, to uplift schools and institutions who are under-resourced. Moreover, if online learning is to be continued in the foreseeable future, then the government shall provide needy children with learning equipment, however, children's privacy shouldn't be compromised during the Online learning programme. The Central Board of Secondary Education (CBSE) mandates the presence of a counsellor in all the schools that follow CBSE curriculum. Following these lines, schools should ensure regular sessions of children and adolescents with the school counsellor to discuss any concerns or disturbance they might be facing.<sup>45</sup> CBSE has also launched a career counselling portal to help students overcome the stress of deciding their career paths.<sup>46</sup> Similar initiatives can be initiated by the State boards in their jurisdictions as well. The Ministry of Human Resource Development has launched PM e-Vidya, which unifies all efforts of the government related to online learning, which includes DIKSHA, IITPAL, AIR etc. Further, BHARAT NET scheme has also been executed to improve internet connectivity in the rural areas.<sup>47</sup> Department of School Education & Literacy under the Ministry of Human Resource Development has prepared a booklet containing guidelines for digital education. One of its sections states that while pursuing digital education, appropriate physical and mental health habits such as ergonomics, yoga, exercise and maintaining a conducive learning environment must be implemented.<sup>48</sup> More efforts have also been made by the government for a smoother transition to online education, but it is pertinent that the execution of these schemes is also done, especially in the backward regions of the country. Access to quality education can also help children advance their emotional intelligence, which will help them combat different kinds of stressors throughout their lives. In the end it is significant to recall the Tibetan proverb, "a child without education is like a bird without wings".

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<sup>44</sup> NIMHANS, *E-Learning Program on Mental Health and Psychological issues in COVID19*, COVID 19: Mental Health and Psychosocial issues (vknnimhans.in) (last visited Aug. 11, 2021).

<sup>45</sup> Vaishali Sood, *With Serious Lack of School Counsellors, Are We Failing Our Kids?*, FIT (Aug. 12, 2021, 6:00 PM), <https://fit.thequint.com/mind-it/india-lack-of-school-counsellors#read-more>.

<sup>46</sup> India Today Web Desk, *CBSE Class 10, 12 career counselling portal launched*, India Today (Aug. 12, 2021, 6:09 PM), <https://www.indiatoday.in/education-today/news/story/cbse-class-10-12-career-counselling-portal-launched-1836793-2021-08-04>.

<sup>47</sup> Press Information Bureau, *Steps taken to provide online education amidst COVID-19 pandemic*, <https://pib.gov.in/PressReleasePage.aspx?PRID=1695152> (last visited Aug. 11, 2021).

<sup>48</sup> Department of School Education & Literacy, *Pragyata- Guidelines for Digital Education*, [https://www.education.gov.in/sites/upload\\_files/mhrd/files/pragyata-guidelines\\_0.pdf](https://www.education.gov.in/sites/upload_files/mhrd/files/pragyata-guidelines_0.pdf) (last visited Aug. 12, 2021).