LEGAL DIMENSIONS OF ECONOMIC GROWTH THROUGH INFRASTRUCTURES DEVELOPMENT IN HEALTH CARE AND EDUCATION SECTOR

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Abstract

The essence of Human Resource Development in Education Sector and Health Care Sector play a vital role in balancing the socio-economic fabric of a country. Since the citizens of a nation are the most valuable human resource and thus the quality of its people is the most crucial factor in determining the over all growth and development of a nation. In this connection it has been aptly observed by the Kothari Commission on Education (1964-66) that, the destiny of India is being shaped in her classrooms. Therefore, in-order to stand distinctly among the developed nations of the world it is imperative to focus on the nurture and care aspect of basic education and healthcare of our people for a better quality of life leading to an enhanced productivity. In this regard Constitution of India being a living document contains elaborate provisions in its part III and IV, which deals with the Fundamental Rights and Directive Principle of State Policy respectively.

The National Health Policy and the National Educational Policy documents need to be reexamined in the light of the best practices world over in this connection. Hence an appropriate model of economic growth through infrastructure development in health care and education sector needs to be conceptualized in the light of the rural-urban divide, its plurality and regional variations in a vast country like India, rightly known as a subcontinent. The studies at hand envision the modalities of infrastructure development by exploring the legal dimensions of Education and Health care sector, to meet the challenge of economic growth of modern day India.

Keywords: Infrastructure, socio-economic fabric, modalities, Plurality, Human Resource, Human Capital, Enhanced productivity etc.

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INTRODUCTION

Late President of India Dr APJ Abdul Kalam¹ aptly described in Indomitable Spirit that "When learning is purposeful, creativity blossoms, when creativity blossoms, thinking emanates, when thinking emanates, knowledge is fully lit, when knowledge is lit, economy flourishes." In this context it would be pertinent to mention that well established physical and social Infrastructure are essential for a nation's rapid growth of economy, improvement in quality of its human capital and alleviation of poverty. While physical infrastructure is an important factor of domestic production, the social infrastructure is imperative for human development. A study conducted by Prof Pradeep Aggarwal² reveals that India substantially lag behind other emerging economies in terms of physical as well as social infrastructure. This could be the main cause of India's slow progress in poverty alleviation. The present study will focus on Education and Health Care Sector which are the main component of Social Infrastructure.

Beside natural resources the most important resource of a nation is its people i.e Human Resource, who plays the most vital role in the infrastructure development and economic growth of a nation. But Human Resource of nation is itself conditioned by two factors that is knowledge base and physical wellness of its people. Here comes the role of the Sovereign, in shaping its Education and Health Care Policies in tune with Constitutional provisions and need-of-the-hour, so that country can boost off its qualitative Human Resource. A look at the international reports with Index of education- health, infra-composite factors reveals following scenario:

- Global Gender Gap Index (GGGI)-2017³ of World Economic Forum(WEF) which covers 144 major emerging economies and measure their GGGI on the basis of gender equality reveals that India slipped 21 ranks and stood at 108/144.
- Global Human Capital Index(GHCI) of (WEF)-2017⁴ aims to capture full human capital potential profile of 5 distinct age groups of a country, India slipped 2 ranks and stood at 103/130.
- Inclusive Development Index (IED) of (WEF)- 2017⁵ is based on key measures of growth and development, inclusion, and inter-generational equity reveals that India ranks 60/103 and stood among 10 emerging economies with advancing trend.
- Finally, Human Development Index (HDI) adopted by United Nation Development Program (UNDP) to measure member countries' development, is used as a measure of the State of the Economic Growth and Infrastructure Development of a Nation. HDI is

¹ Dr A.P.J Abdul Kalam, Indomitable Spirit website: <u>rajpalsons.com</u>

² Prof Pradeep Aggarwal, *Infrastructure in India: challenges and the way ahead*, Prof Pradeep Aggarwal, Head of RBI unit at Institute of Economic Growth, Delhi

³ Global Gender Gap Report 2p17 of World Economic Forum.

⁴ Global Human Capital Report of (WEF)-2017

⁵ Inclusive Development Index (WEF)-2017

based on composite statistic which includes Education, Life expectancy and Income per Capita as key indicators. The index was discovered in 1990, by eminent Indian economist and Noble Laureate *Dr Amartya Sen* and Pakistani economist *Mahbub-Ali-Haq*. According to Human Development Report⁶ published on14, September, 2018 - India ranks at 130/189 with a *Medium Human Development Index* of 0.640. Norway stood at the top of the table with HDI of 0.953, while Niger was at the bottom with least HDI of 0.354.

HDI is used to rank member countries into four categories of Human Development index. 58 nations figured in the *Very High Human Development* category mostly from western world. There were 54 countries with *High Human Development Index*. In the category of *Medium Human Development* figured 39 countries including India, while 38 countries were labelled as *Low Human Development* countries on the basis of *Very Low Human Development Index*.

A country secured higher on HDI when the life span due to health care infrastructure/knowledge due to educational infrastructure and GDP per Capita due to sustained economic growth were all higher. The index is based on the human development criteria, weather people are capable of doing desirable things in life for example; are they being well fed, have home or homeless, their state of health, their employment status, their skill learning and education status, voting or not and their participation in community life. The HDI is finally the Geometric Mean of the Life Expectancy Index, Educational Index, and Income Index⁷. This brings the present study close to Health Care Sector and Education Sector and there relevance for Economic Growth through infrastructure development. The study will be focused on Indian context and will include the understanding of the best practices. A comprehensive study of the indicators mentioned above will also be undertaken in the light of their legal aspect.

HEALTH CARE ISSUES, INFRASTRUCTURE AND CHALLENGES

Public Health Care in a welfare state approach is state responsibility, more so in a developing country like India. The issues are endless ranging from sanitation, drinking water, air pollution, Health education to prevention and treatment of disease. Various States in India hold different views regarding issue of Birth control and we have failed miserably in stabilization of our population, particularly in the aftermath of the bitter experience of 1975 emergency, the time of forced sterilization. However the southern states in India could only succeed in adopting appropriate family planning measures, while the northern states still holds anti mind set against family planning. It is pertinent to mention that the southern states of Kerala and Tamil Nadu could successfully reduce the fertility rate to equalize European standards. It was possible due to collaborative efforts and zeal of public representatives, civil servants and medical professionals. Country also witnesses a regional variation in Maternal Mortality rate (MMR)⁸ and to reduce Maternal and infant mortality is a big challenge of

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⁶ Human Development Report 2018, UN Development programme, pp 22-25, Sept. 14, 2018

⁷ Human Development Index-Wikipedia

⁸ Supra note 2

health care sector in India. In this regard there is a direct relationship between the Health of child bearing mother and Maternal & infant mortality. The legal aspect of this issue in Northern states is primarily related to the early marriage of girls and Boys i.e. before the legal age of 18 and 21. This situation warrants stringent measures to be taken up in the Administration of justice. Malnutrition of mothers often results in the birth of undernourished babies who are prone to disease at birth and even death. There is a dire necessity of professional health manpower in the country both qualitatively as well as quantitatively. Various councils which regulates Medical Education and deals with the registration of practitioners such as Medical Council of India/Dental Council of India/Pharmacy Council of India and Nursing Council of India, etc. needs to be thoroughly revamped. Every now and then we hear about the news of prevailing corruption in these bodies. It is owing to the fact that these Councils were formed by a political process of election and thus corruption became inevitable. Today getting admission in a Dental or Medical college has become highly commercialized, recent example of VYAPUM scandal in the state of MP is an eye opener. It is quite understandable that these Medical professionals, who get into Medical stream by money factor, are destined to rob people with very low skill and poor professional ethics. It also has a deteriorating effect on the health scenario of the nation. The situation warrants a closer eye of law on such bodies and appropriate legislative measure to be taken up so that corruption can be rooted out as an accepted way of life. At the level of government the proposal to set up a National Council for Human Resource in Health (NCHRH)⁹ is a well thought of strategy. The very objective of setting up such umbrella organisation is based on the notion of ensuring the goal of health manpower planning, the standards of prescription, accreditation mechanism and adherence to ethical standards. These goals must be served in an integrated fashion on the lines of best practices. The legal aspect of such a body must be founded on sound democratic practice so that in the event of administrative failure there is recourse to competent Court of law. The Indian Medical Association (IMA)¹⁰ and Doctors fraternity in general are apprehensive about the creation of such a body as they perceive it as an encroachment on their autonomy. It is well known that health manpower planning has been simply ignored and consequently public health has become a low priority. The main issue before the nation is how to overcome the problem of producing adequate number of medical professionals as per the need of primary, secondary and tertiary sector for public as well as private sector. The NCHRH Bill¹¹ is yet to see the light of the day. The legal dimension of health care is of paramount interest to a common man. We need to rapidly build up health care infrastructure in rural areas by taking all round legislative measure for creating institutional mechanism at the district and sub divisional head quarter level on priority basis starting with the most backward districts. The first step in this direction is to come up with a clear cut policy measure to equip and entrust District and sub divisional Hospitals to serve as a nodal centre's for training of paramedical personals to serve in rural areas where health care is lacking as MBBS/BDS doctors are unwilling to serve. This will provide an opportunity to rural youth with 10+2 science background to be trained as a paramedical by

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⁹ Available at: http://www.prsindia.org

¹⁰ India's health issues & challenges, Available at: http://www.wikiprogress/

¹¹ Ibid

the staff and Doctors already available in these Hospitals. Small batches of 50 to 100 depending on the size and needs of the district concerned will serve the purpose.

Today we have more than 640 Districts in India and the number of doctors on roll is not sufficient as per sanctioned strength. Thus there is a problem of retaining good doctors in public health sector in the country. And this is what ailing our health sector the most, therefore a better salary, political non-interference in posting and better on job facility is a desired solution for this problem. It is the prime responsibility of a legitimately elected government to ensure that in Health sector, doctors, essential drugs and supporting staff is made available adequately. The transparent and fair process is key to the solution of the problem in health care sector.

ANALYSIS OF BEST PRACTICES IN HEALTH CARE SECTOR

Recently Prime Minister of India Narender Modi launched the world's most ambitious and all time largest publicly funded government - sponsored healthcare insurance programme, popularly known as PMJAY-Ayushmann Bharat¹². It aims at providing healthcare insurance facilities to over 10 crore families covering urban and rural poor. This programme promises to insure 500 million poor people across the country; the scheme offers an insurance cover of Rs 5 lakh¹³. Under the scheme more than 24% household in rural India and 18% in urban areas are targeted to be covered. This scheme is a result of following the best practices in the world as well as realization on the part of government of their welfare state commitment.

No doubt private insurance is a costly affair to fund public health care. Researcher has shown that if we look at the relationship between private insurance and a nation's total health care cost, it reveals a strong positive correlation¹⁴. In other words more a country promotes a scheme of private insurance the more it pays in health care sector, without any extra benefits. In countries like Sweden, Norway, Denmark, Finland and Iceland, it is found that private insurance is either absent or plays an insignificant role in funding health care. Around 9% of GDP of these countries goes in containing their total health care cost. In comparison to this India spends a little over 1% of GDP on health, India's per capita public expenditure on health increased from Rs 621 in 2009-10 to Rs 1112(about 15 \$) in 2015-16. It is very low compared to other countries as Switzerland spends \$6944 on health per capita, while country like USA spends \$4802 and UK spends $$3500^{15}$. This picture could change as government of India plans to launch most ambitious National Health Protection scheme (NHPS)-Ayushmann Bharath, with an annual health cover of Rs 5 lakh (\$7142=\$1428 per person). Here it is pertinent to mention that most hospitals in Norway and Sweden are government based, there are some private hospitals but all hospitals are they public or private, provide service to public patients at par. Thereby, meaning that there is no differentiation between public and private hospitals unlike the scenario in India. The principle feature of these Nordic systems is

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¹² Available at: http://www.economictimes.indiatimes.com (Accessed on: 28 Sept. 2018)

¹³ Available at: http://www.indianexpress.com (Accessed on: 26 Sept. 2018)

¹⁴ Creating a better health care system: lessons from Norway and Sweden by Ian McAuley, Sept.1, 2014

¹⁵ Available at: https://www.timesofindia.indiatimes.com

a judicious blend of the single-payer-national insurance system and co-existence of private insurance with a strong market signal backed by well-structured co-payments.

Health care system of Nordic countries is well known for their commitment to values of equity and social justice. This practice brings these countries in health status like infant mortality at lowest and in life expectancy at highest. The basic element of the health system of these Nordic countries ¹⁶ comprises of the following:

- Universal Access All major political parties continue to be committed to the right of every citizen to receive comprehensive health service,
- Predominately Public Ownership The service delivery structure remains overwhelmingly public e.g as well over 90% in Sweden,
- Single Source Financing The focus is on developing a uniform social insurance system,
- Expanded Primary and Preventive Service Government remain dedicated for continued expansion of primary, preventive and social care service. It also include the recent changes in the financial responsibilities of local political boards i.e emerging municipality-based contracting system. Among the good initiatives in India the Clinical establishments(Registration and Regulation) Act which aims to streamline health care services across the country, ensuring private hospitals do not engage in unethical practices is yet to come in full swing. Health care Sector in India is growing rapidly and by some estimates is at \$78 billion and is expected to grow to \$280 billion by 2020¹⁷. Medical tourism is also an important area of infrastructure development in India to boost its economy growth.

EDUCATION SECTOR, LEGAL PERSPECTIVE

Different Philosopher of Education holds different notion about what Education is about? But in Latin "Education" literally means to "bring up", which conveys to bring out the hidden potential or talent, within an individual. Education in a broader sense acts as a catalytic input for empowerment of people with skills and knowledge thereby making them a better human being. Education also brings improvement in human capital which is imperative for a productive employment in a society, which is on the path of economic growth and development. It is pertinent to mention here the famous case of Brown vs Board of Education, 347 U.S.483 (1954)¹⁸ it was a landmark case in which US Supreme Court held that state laws regarding separate public schools for black and white students were unconstitutional. The Court also made an observation about Education and held that "it is the very foundation of good citizenship; today Education is the principal instrument in

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¹⁶ Recent health policy initiatives in Nordic countries by Richard B. Saltman

¹⁷ Available at: https://economictimes.indiatimes.com

¹⁸ Brown v. Board of Education, 347 U.S.483(1954)

awakening the child to cultural values and grooming him for professional training and in helping him to adjust normally to his environment".

In the Indian context since time immemorial to discover the latent potential of an individual has been the very essence of Education. India had a "Gurukul system" of education in the ancient past and was the center of excellence in the field of education with *Takshila* (700BC) as the first university of the world. Higher education centre flourished at *Ujjain.*, *Nalanda* and Vikramshila universities. The present system of education on western lines was introduced by the British on the recommendation of Lord Macaulay, which gradually brought the ancient Indian system of education to an end. At present right to education is a fundamental right under Article 21A of the Constitution of India 19. Although, UN convention, Universal Declaration of Human Right 20 (UDHR) 1948 and International Covenant on Economic, Social and Cultural Right²¹ (ICESCR) recognised right to education long ago. However Article 46 of the Constitution of India emphasise on the role of state to promote, with special care the Education and Economic interest of the weaker section of the people. In fact Article 330, 332, 335, 338, 342 and the entire V and VI schedule of the Constitution of India²² deals with special provisions for carrying out the objective set forth in Article 46. We know that Constitution of India envisage a federal set up where Education is placed in concurrent list, which makes both centre and states responsible for it. However school education remains with the states while centre only determines standard of higher education and technical education. Under Article 19(1)(g) of the Constitution of India²³, establishing and or running an educational institution cannot be regarded as "trade" or "commerce". It is in fact the settle position of law and regulatory framework under Indian law. In this regard, following case laws decided by the Hon'ble Supreme Court are important to look at:

- In *State of Bombay* v. *R.M.D*²⁴ Apex Court held that imparting Education is per se an activity that is charitable in nature.
- In *Unni Krishnan* v. *State of* AP^{25} Apex Court was of the opinion that imparting Education cannot be allowed to become commercial in India, with a profit motive.
- In TMA Pai foundation v. State of Karnataka²⁶ Apex Court held that the reasonable profit after making investment and expenditure must be utilised for the benefit of the Educational institution. Surplus/profit cannot be utilised for any other use or business purposes. These cases reflect on the true scenario of private run Educational institution and the charitable purpose for which they were created.

¹⁹ Article 21A, Constitution of India

²⁰ Article 26

²¹ Article 13

²² Ibid

²³ Ibid

²⁴ AIR 1957 SC 699

²⁵ AIR 1993 SC 2178

²⁶ AIR 2002 8SCC 481

EDUCATION SECTOR INFRASTRUCTURE AND ECONOMIC GROWTH

It is well said that the fate of Country depends upon the Education of its people. In today's time the economies are increasingly knowledge based. This makes the role of Education sector even more crucial in improving the human capital which in turn will leads to a better performance of Economy.

In strict economic sense Capital is broadly classified as to include both Physical and Human Capital. Education being the main component of human capital affects economic growth directly as well as indirectly by influencing productivity. The initial stage of schooling is very important in shaping human capital both qualitatively as well as quantitatively, since human capital is basically shaped by Education. Later on training and learning cognitive skills and the state of health of productive group becomes the deciding factor of for the enhanced productivity. There has been a study employing empirical analysis of macro and microeconomic data, which reveals that there is a direct and positive correlation of Education/ Human Capital²⁷ with the economic growth of a nation. This is also evident from the fact that more affluent countries are also richer in human capital. There are also studies which show that the countries who improved their educational level by sustained endeavour over a period of a decade, have registered a faster economic growth. A well cited example of this is the Asian Tiger economies of S-Korea, Taiwan, Hong-Kong, Malaysia and Singapore. Though there is a strong correlation between improved educational setup and growth but it does not imply causality. This is due to the fact that improvement in Educational sector and faster growth can also be related to other parameters such as institutional infrastructure, social assets, cultural and geo-factors. Even economic growth may lead to improvement in Education sector due to more investment in Education infrastructure, once indicators like economic growth performance and prospects are favourable.

In our educational sector the greatest challenge is low attendance and a very high dropout rate of students particularly at school level. We need to focus on the basic infrastructure development in education sector on priority basis to contain this problem. In this connection, buildings/classrooms/laboratories/equipment's/play grounds/ basic teaching aids/student-teacher ratio ²⁸ etc are the crucial indicators for promoting conducive teaching-learning environment in schools and universities on a long term priority basis. An investment in quality infrastructure is bound to facilitate better teaching and learning and will go in a long way to reduce dropout rate. Research has shown that good facility of educational infrastructure has a direct bearing on learning outcome through three components of light/air quality, stimulation and individualization (flexibility of learning space)²⁹.

Education sector is always cited as a victim of low budgetary provision. Kothari Education commission (1964-66), recommended an allocation of 6% of GDP on Education, which is yet to be achieved. In this connection most of the developed nation, having a more mature

²⁹ Ibid

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²⁷ Human Capital and Economic Growth, Osterreichische National Bank Vienna, 21-5-2007.

²⁸ Education - World Bank Blogs, Jansen Teixeira, 10-3-2017.

Educational system are allocating a budget outlay of 4.5% to 6% of their GDP on Education sector. On the contrary India has decreased its spending on Education sector from 4.4% of GDP to 3.71% in the fiscal year 2017-18. Today India stands at the rank of 143 out of 195 nations in terms of its % GDP allocation on Education. Where most of the rural schools are missing science laboratory and basic infrastructure needed to sustain teaching and learning. Therefore at this stage of economic development we just can't afford to have an adhoc approach regarding infrastructure development and investment in education sector.

LEGAL DIMENSIONS OF INFRASTRUCTURE DEVELOPMENT

Indian economy is a developing economy and our infrastructure is also in a developing phase. In the age of privatisation and globalisation of economy the infrastructure development has also witnessed the entry of private stakeholders in the field of Health care and Education. New trends of build operate and transfer (BOT) mode as well as public private partnership (PPP) mode has also emerged. This situation has led to redefining the role and responsibility of the government in modern time. India being a welfare state is duty bound to look after the welfare of its citizens and therefore cannot shed its responsibility under the plea of private stakeholders being engage in infrastructure development. Our High Courts and Supreme Courts are the custodian of the Fundamental Rights enshrined in Part III of the Constitution of India also known as the Magna Carta of Indian Constitution. Since, defining state was essential to ensure Fundamental Rights which are guaranteed against state as defined under Article 12, in the Constitution of India. 30 It was the wisdom of Dr B.R Ambedkar who insisted on the retention of the phraseology of Art 12, so that Fundamental Rights can be claimed against anybody or any authority, exercising power over people. Consequently the wordings of Article 12 were framed in a way to give effect to the needs and aspiration of a changing society. Thus the Constitution of India is a living document as it guides good governance. This is how Indian Constitution was ahead of its time to foresee the challenges to come in time.

There are Courts verdicts where violation of Fundamental Rights can be enforced against private bodies and person and even courts can proceed Suo-motto in such cases by applying the test of instrumentality as a function of state in famous case of *Ajay Hasina* v. *Khalid Mujib & Others*³¹ and later on in *Bodhisattva-Gautam* v. *Miss Shubhra chakraborty*³². Thus, a legitimately elected government can't get rid of its duty and responsibility of taking care of public interests and welfare measure irrespective of changed economic policy. This is the main reason for creating a number of regulatory bodies and mechanism by government of India such as University Grants commission, Institute of Charted Accountant, Food safety and standards, All India Council for Technical Edu, Medical Council of India, National Highway authority of India, Pharmacy Council prof India, Indian Nursing Council, Central pollution Control Board, Bar Council of India, Competition Commission of India, Dental Council of India, etc to cater for the need of monitoring Social Infrastructure development in

³⁰Article 12. in the Constitution of India

³¹ AIR 1981 SC 487

³² Bodhisattva-Gautam v. Miss Shubhra Chakraborty, 1996 SSC (1) 490.

India. These regulatory bodies possess quasi-judicial power, so error Vern state is bound by their verdict. In today's economic scenario private players and the government are very keen to have a binding kind of agreement. However the possibility of PIL or matter landing in courts under such contracts due to disputes is common. This possesses the main threat to infrastructure development provided such litigation is not rationally based on corrupt practices. This necessitates the need for creating awareness to develop a legal perspective of such issues in public domain as well as at the level of stake holders for a vibrant economy to emerge. Finally legal dimensions of economic growth through infrastructure development has to be appreciated in the light of the dynamic interaction among private financiers, Managers, legal experts, government administration, NGO, and public representatives so that a viable mechanism of speedy and unhindered development of infrastructure can be evolved.

CONCLUSION

The physical and social infrastructure of a country decides the fate of its economy i.e good can boost economic growth and poor can retard economic growth. Education and Health are the most important components of Social infrastructure. These two components are imperative for promotion of optimum utilization of both Human Resources as well as physical infrastructure. This in turn leads to improvement in overall economic growth and improvement in the quality of life of the people. The economic advancement of Europe/North America/Japan was possible due to their sustained achievement in human capital. This is the importance of social infrastructure. Therefore, investment in human capital through education, training and health is instrumental in increased output and economic growth. Economic growth theory also envisages human capital as a key indicator of economic growth. No amount of welfare measure can eradicate poverty or help a poor illiterate person except through investment in basic health care and education, whereby he can be enabled to become a more productive and skilled member of society. Thus there is a need for expansion of infrastructure in education and health care sector by sustained improvement of quality, budgetary allocation and good governance. The role of education and health in economic development through investment in human capital is no less than physical means of production. These efforts will go in a long way to meet sustained high rate of economic growth, which in turn will help in elimination of poverty and improvement of human development. In the end it would be most appropriate to quote William J. Clinton who was of the view that it is morally correct and also good economics to advance opportunity of equality and economic empowerment to all, since the factors like discrimination, poverty, and ignorance are the main constraints for economic growth. While investments in education, health infrastructure and scientific & technological research increase it, by creating more employment opportunities and wealth for all. So the time is ripe to usher in an era of new economic growth by making an all-round enthusiastic-collaborative effort in developing social infrastructure by our public representatives, civil servants, medical professionals, educationists and various NGO.