

When in Conflict: Guaranteeing the Right to Education in India

by Sanskriti Sanghi*

INTRODUCTION

Since 2007, the military use of educational institutions has been documented in 29 countries, commonly those countries which have been experiencing armed conflict during the past decade.[1] Educational institutions have been taken over, partially or in entirety, in order to be converted into military bases, used for training fighters, used as interrogation and detention facilities, or to hide weapons. Such occupation or use of educational institutions for military purposes, and targeted violent attacks on educational institutions and their infrastructure, disrupt education and expose students to the risks of death, injury, recruitment, and sexual exploitation. To prevent and discourage the military use of educational institutions domestically, there must be action at the international level.

Given that the right to education is recognized in the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights, a legal framework is needed to protect the right and recognize the repercussions of military use of educational institutions.[2] This article addresses the historical development of the international framework leading up to the Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict and the Safe Schools Declaration; and argues for India to endorse these documents.[3]

INTERNATIONAL LEGAL FRAMEWORK

The use of educational institutions by military in armed conflict was first explored as early as 1935 in the Roerich Pact, which stated that educational institutions “shall be considered as neutral and as such respected and protected by belligerents.”[4] In international law, a deliberate attack on a school is prohibited and amounts to a serious violation of the laws and cus-

toms applicable in armed conflict. This is established in Article 52(2) of the Additional Protocol I to the Geneva Conventions, which recognized that “attacks shall be limited strictly to military objectives,”[5] and must comply with the rule of distinction and proportionality as required in an attack upon an object.[6] Additionally, international humanitarian law states that “intentionally directed attacks against buildings dedicated to education” constitute war crimes.[7]

The Rules of the ICRC Customary International Humanitarian Law Study refer to rules which come from a general practice accepted as law, as opposed to treaty law. These rules are of crucial importance to today’s armed conflicts because they strengthen protections offered to victims by filling in the gaps left by treaty law. Rule 7 recognizes that “[t]he parties to the conflict must at all times distinguish between civilian objects and military objectives. Attacks may only be directed against military objectives. Attacks must not be directed against civilian objects.”[8] Rule 9 states that civilian objects are not military objectives, and schools are prima facie civilian objects, unless they become military objectives.[9] Further, under Rule 10, civilian objects, such as schools, lose protective status when used for military purposes, such as hosting artillery or being used as a command post.[10] However, there is a rule of presumption that establishes that, “in case of doubt whether an object which is normally dedicated to civilian purposes, such as ... a school, is being used to make an effective contribution to military action, it shall be presumed not to be so used.”[11] The objective of the Rules referenced herein and the Articles referenced in the paragraph above, within international humanitarian law, is to deter military use of civilian objects, including educational institutions.

The United Nations Security Council (UNSC) has condemned military attacks on schools as one of the

six grave violations affecting children most in times of war.[12] This classification forms the foundation that allows the UNSC to monitor, report on, and respond to abuses suffered by children during conflict.[13] Similarly, the Optional Protocol on the Involvement of Children in Armed Conflict condemns “the targeting of children in situations of armed conflict and direct attacks on objects protected under international law, including places generally having a significant presence of children, such as schools”.[14] Additionally, Goal 4 of the Sustainable Development Goals 2030, entitled Quality Education, lists ‘[n]umber of attacks on students, personnel and institutions’ as an indicator, addressing the need to safeguard education during armed conflict.[15]

In January 2009, a United Nations Committee on the Rights of the Child Report recommended that states “fulfill their obligation therein to ensure schools as zones of peace and places where intellectual curiosity and respect for universal human rights is fostered; and to ensure that schools are protected from military attacks or seizure by militants; or used as centres for recruitment.”[16] In 2011, the Security Council adopted Resolution 1998, which highlighted the implications of attacks on schools for the education, safety and health of children, and called for greater action to ensure schools would not be involved in armed conflict.[17] In 2012, in light of increased international attention, a coalition of United Nations (UN) agencies and Civil Society Organizations initiated consultations with experts from around the world to develop guidelines, for both government and non-state armed groups, aimed at avoiding the military use of schools and mitigating the negative consequences of such use.

In 2014, UNSC Resolution 2143 recognized the negative impact of attacks on education and raised the issue of engagement by member states of the Security Council in the formulation of concrete measures to deter the military use of educational institutions.[18] The Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict and the Safe Schools Declaration, which were opened for endorsement at the Oslo Conference in May 2015, provide states with a voluntary, nonlegally binding framework to formulate those deterrence measures. States which endorse these legal instruments demonstrate a political commitment to do more to protect educational institutions during armed conflict. This commitment

was mirrored in UNSC Resolution 2225, which expressed “deep concern that the military use of schools in contravention of applicable international law may render schools legitimate targets of attack, thus endangering the safety of children” and urged states to “take concrete measures to deter such use of schools by armed forces and armed groups.”[19]

The Guidelines, though not legally binding, specify that parties to an armed conflict should take all necessary measures to avoid impinging on the safety and education of children. The six guidelines urge states to commit to not using educational premises in support of military efforts, and to extend such commitment to the premises even when the institution is not functioning due to the threat of active conflict.[20] An exception is carved out for extenuating circumstances, in which the premises must be utilized for only a limited time, with no remaining evidence of use by military forces, and availability for the school to reopen at will. States are urged to respect the civilian status of educational institutions and to disseminate and incorporate the guidelines into practice throughout the chain of command. It is also imperative for states to recognize that even if an educational institution has been converted into a military objective, it may only be attacked when no other alternative target is feasible. Consequently, states which attack and occupy educational institutions which have been converted into military objectives are also required to ensure that such premises are not used for purposes of their military personnel or activities.

The Safe Schools Declaration, which has been endorsed by 84 states as of February 2019, encourages state initiatives promoting and protecting the right to education, and facilitating the continuation of education during armed conflict.[21] The Declaration highlights that the Guidelines draw on good practice within the international framework and provide guidance to reduce the impact of armed conflict on education. The Guidelines must be used as the focal instrument to construct domestic policy and operational frameworks, develop and adopt a conflict-sensitive approach to education, focus on continuation and re-establishment of facilities, as well as support international collaborative efforts and establish effective review mechanisms.[22] Further, the Guidelines provide impetus for states to collect data on attacks on educational facilities and victims, provide assistance to

victims in a nondiscriminatory matter while investigating allegations of violations of applicable laws, and establish monitoring and reporting mechanisms.

EDUCATION UNDER ATTACK IN INDIA

As per the Education under Attack Report of 2018, between 2013-2017, military use of educational institutions in India was responsible for damaging or destroying more than 100 schools; over 30 cases of abductions, targeted killings, explosive attacks and violent repressions of student protestors; higher dropout rates among girl students due to sexual violence; and increasingly common attacks on higher education due to rising tensions between student political groups in nexus with communal tensions leading to increased violence affecting academics and students.[23]

In India, education is under attack primarily in the North-Eastern states, Eastern states, Jammu, and Kashmir. The country witnessed its highest rates of attack in 2013 during elections in the North-East and in 2016 during the violent protests in the state of Jammu and Kashmir. These areas are relatively more susceptible to disruption due to communal tensions and separatist movements which trigger unrest and require the intervention of the military.[24]

India's deviation from international law and policy protecting schools during armed conflict has led to many threats to education. India must create and implement a domestic legal framework that prevents armed conflict from affecting education.

DOMESTIC LEGAL FRAMEWORK

As per Section 3(2) of the Manoeuvres, Field Firing and Artillery Practice Act, 1938, domestic legislation which deals with power exercisable for the purpose of manoeuvres, "[t]he provisions of sub-section (1) shall not authorise entry on or interference with any ... educational institution..."[25] Section 3 of the Requisitioning and Acquisition of Immovable Property Act, 1952, states that where the competent authority is of the opinion that a property is likely to be or is needed for any public purpose, the property should be requisitioned by an order in writing. The provision states: provided that no property or part thereof ... is exclusively used ... as a school ... or for the purpose of accommodation of persons connected with the man-

agement of ... such school ... shall be requisitioned. [26]

The right to education is a constitutional guarantee under Article 21-A of the Constitution of India, read alongside Article 41 pertaining to right to education as a Directive Principle of State Policy, Article 45 pertaining to free and compulsory education for children, and Article 46 pertaining to the promotion of educational interests of the weaker sections of the society.[27] The domestic laws discussed above display the inadequate scope of protection provided to education in general, as well as educational institutions. They present a vacuum in comparison with international law; several of the relevant instruments have not been endorsed by India, namely the Additional Protocols to the Geneva Conventions, the Rome Statute, the Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict, and the Safe Schools Declaration.

Despite this vacuum, India remains bound by customary principles of International Humanitarian Law and obligations arising under ratified instruments, namely the International Covenant on Economic, Social and Cultural Rights, and the UN Convention on the Rights of the Child. In 2010, the National Commission for Protection of Child Rights recognized these obligations, noting that "[s]chools should never be used as temporary shelters by security forces. The National Commission for Protection of Child Rights is of the view that use of schools by police or security forces violates the spirit and letter of the Right to Free and Compulsory Education Act 2009 because it actively disrupts access to education and makes schools vulnerable to attacks."[28]

ROLE OF THE JUDICIARY IN INDIA

The Indian judiciary is playing a significant role in highlighting the responsibility of the police forces, military, armed groups, schools, students, teachers and educational personnel, identifying deficiencies in the law, and bringing state practice closer to international standards. In *Inqualabi Nauzwan Sabha v. The State of Bihar*, it was noted: "What is being complained of is that the police has occupied the building of the school with the result that the children are not being sent to school where the police has occupied the class



PHOTO OF CHILDREN STUDYING AT SCHOOL IN TEH NORTH GOA, INDIA VIA WIKIMEDIA USER SALI CHODANKAR, LICENSED UNDER CC BY-SA

rooms. This is depriving the children of education. The correct perspective would be that the police may remain within the district; but, the schools should not be closed for the reason that the classrooms have been converted into barracks. Why should this happen? This is depriving a generation and a class of children from education to which they have a right.”[29]

Further, in *Paschim Medinipur Bhumij Kalyan Samiti v. West Bengal*, the state requisitioned 22 schools to accommodate police forces deployed there to cope with the tensions in the region. Though 10 schools had been handed over, the state was directed to give up possession of the remaining schools which had been requisitioned, within a period of one month.[30]

In *Exploitation of Children in Orphanages in the State of Tamil Nadu v. Union of India*, the Court noted that schools, hostels and children home complexes under the control of security forces should be vacated within a provided time period, and such premises should not be allowed to be used by such forces in the future for any purpose.[31] Further, the Court directed the Ministry of Human Resource Development to submit a

list of all the schools and hostels which were occupied by security forces, while the Ministry of Home Affairs was directed to ensure that the premises were vacated by such forces. Similarly, in the decision of *Nandini Sundar v. The State of Chhattisgarh*, the Court held that security forces that had not complied with the direction to vacate all occupied educational institutions were provided one last chance to vacate through a stipulated time period.[32]

INTERNATIONAL CONCERN OVER THE DEVIATION OF DOMESTIC LAWS IN INDIA FROM THE INTERNATIONAL LEGAL FRAMEWORK

The deviation of Indian domestic laws from the international legal framework governing education under attack has also been a subject of concern in the international community. This can be noted through the concluding observations on the report submitted by India under article 8, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, which reflected that the Committee was concerned at the deliberate nature of attacks on schools by non-state armed groups as well as occupation of schools by state armed forces. The Committee urged India to proactively undertake measures to prevent the attacks on, occupation of, and use of places with a significant presence of children, such as schools, in alignment with international humanitarian law. The Committee further urged India to ensure that schools were vacated in an expeditious manner and to take concrete measures to promptly investigate cases of unlawful attacks or occupation of schools and prosecution and punishment of perpetrators.[33]

Further, the Committee on the Rights of the Child’s concluding observations on the consolidated third and fourth periodic reports of India noted, “[t]he Committee ... calls upon the State Party ... to take measures to... [p]rohibit the occupation of schools by security forces in conflict-affected regions in compliance with international humanitarian and human rights law standards....”[34]

RECOMMENDATIONS TO ENSURE THE SAFETY OF EDUCATION IN INDIA

In furtherance of the goal to promote and protect the right to education, even when under attack during

situations of armed conflict, India should endorse the Safe Schools Declaration, and commit to incorporating the framework of the Guidelines and intent of the Declaration into domestic policy.[35] Given that India has not provided explicit protection for the right to education within domestic laws, and has neither ratified nor signed nor endorsed the relevant international instruments identified above, it is imperative for India to implement the international legal framework and enact domestic legislation. The framework must expressly prohibit attacks on educational institutions; disseminate and build awareness on such laws, regulations, and policies which prohibit armed forces and groups from using the premises of such institutions; and ensure that all violators of international and domestic protections are held accountable. Further, in order to improve prevention as well as response, India should establish a monitoring mechanism for reporting attacks on education, collecting disaggregated data, and provide training to all armed groups, schools, students, teachers, and educational personnel.[36]

Local negotiations spearheaded by the government should attempt to further efforts at the international and national level through agreements providing educational institutions safe haven by declaring them politics-free zones, banning weapons, and providing a code of conduct for forces. Additionally, India should implement conflict sensitive education and curriculums to minimize the negative effects of attacks due to greater understanding among potential victims. Advocacy for the protection of education from attack should also be carried out at all levels with clearly defined objectives, and with messages communicated to all relevant stakeholders.[37] While endeavouring to prevent, India must also be capable of response. Importantly, it is imperative for India to provide remedies for education-related violations which must be available and effective, including fair functioning of the mechanisms and assistance to all victims seeking access to such mechanisms without discrimination. Physical protection measures must also be implemented by India to shield potential targets and reinforce their protection, as well as programs of alternate delivery of education to ensure non-interruption of education.[38]

CONCLUSION

Attacks on education have significant consequences,

both short and long-term. The military use of educational institutions during armed conflict harms the education system, educators, and students. Education is critical for the social and economic recuperation of a society in the aftermath of conflict and crises, and is widely recognized as the foundation for other social, economic, and political rights. Possession and use of schools by the military impedes access to education, and threatens future outcomes for children and society as a whole. In this article, I argued that, by failing to incorporate international standards in domestic law, the right to education in India as guaranteed by the Indian Constitution is hollow.

With the endorsement of an international legal framework, incorporation of international standards within the domestic framework, and measures for protecting education and mitigating the effects of attacks, India's legal framework will be capable of protecting education. India's legal framework must not only expressly prohibit attacks on educational institutions, but must also pave the path for the establishment of a monitoring mechanism, implementation of physical protection and remedial measures for victims of education-related violence, a conflict-sensitive curriculum, and dissemination of information and awareness regarding such laws. Such a framework shall then be reflective of the enabling capacity of education, which is necessary to empower access, capacitate meaningful participation in society, and promote respect for the dignity of all.[39]

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