

## **Educational Rights of Disabled People in India-A Need of the Hour**

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### **I. INTRODUCTION**

India is the largest democracy in the world. According to Census 2011, there are 1.2 billion people in the country, out of which, about 833 million people live in rural areas. Census 2011 data on disability has not been announced yet. United Nations observes that 10% of the population has disability and there are about 120 million people with disabilities in India. Disability is difficult to define since it varies in type, form and intensity. Understanding disability will require understanding of these differences. As per the World Health Organization; Disability is an umbrella term, covering impairments, activity limitations, and participation restrictions, impairment is a problem in body function of structure; an activity limitation is difficulty encountered by an individual in executing a task or action; while a participation restriction is a problem experienced by an individual in involvement in life situations. Thus disability is a complex phenomenon, reflecting an interaction between features of a person's body and features of the society in which he or she lives. The Convention on the Rights of Persons with Disabilities (2006), the first legally binding disability specific human rights convention, adopted by the United Nations gives two descriptions of disability. The Preamble to the Convention states that "Disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinder their full and effective participation in society on an equal basis with others". Again it emphasizes that "Persons with disabilities include those who have long term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others". Both the expressions reflect a shift from a medical model to social model of disability. In the medical model, individuals with certain physical, intellectual, psychological and mental impairments are taken as disabled. According to this, disability lies in the individual as it is equated with restrictions of activity with the burden of adjusting with environment through cures, treatment and rehabilitation. In contrast in the social model the focus is on the society, which imposes undue restrictions on the behaviour of persons with impairment. In this, disability does not lie in individuals, but in the interaction between individuals and society. It advocates that persons with disabilities are right holders and are entitled to strive for the removal of institutional, physical, informational and attitudinal barriers in society. In India, different definitions of disability conditions have been introduced for various purposes, essentially following the medical model and, as such, they have based on various criteria of ascertaining abnormality or pathologic conditions of persons. In absence of a conceptual framework based on the social model in the Indian context, no standardization for evaluating disability across methods has been achieved. In common parlance, different terms such as disabled, handicapped, crippled, physically challenged, are used inter-changeably, indicating noticeably the emphasis on pathologic conditions.

In India Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995 defined as a person suffering from not less than forty percent of any disability as certified by a medical authority.

The disabilities identified are, blindness, low vision, cerebral palsy, leprosy, leprosy cured, hearing impairment, loco motor disability, mental illness and mental retardation as well as multiple disabilities.

The National Sample Survey Office (NSSO) considered disability as "Any restriction or lack of abilities to perform an activity in the manner or within the range considered normal for human being". It excludes illness / injury of recent origin (morbidity) resulting into temporary loss of ability to see, hear, speak or move. Presently, there has been a considerable shift in the understanding of disability, from earlier medical interpretations of seeing disability as a deficit within the individual to that of viewing it in the context of a Human Rights issue. Education is a human right with immense power to transform. Education of children with disabilities (CWD) has been a part of policy developments in India for the past few decades. The policies of the government of India towards the education of children with disabilities have been reflected in the enactments, schemes and through institutions established for various relevant activities.

As part of Inclusive education, it deals with many hurdles and barriers. Though sounds very high and optimistic, the education system & the method of its implementation mainly vary with the type of disabilities and the need of the children. The system demands overcoming the deterrents difficulties while catering to the needs of the children as they are specially placed and differently situated. So far as the education of disabled is concerned, it must address the issues of inclusive education which is concerned with integrated activities, discrimination, special schools for children with special disabilities and its possible solutions and should examine whether the present education system is able to cater the special needs of the children with disabilities or not.

Government of India has passed the Person with Disability (PWD) Act, 1995 for equalization of opportunities, protection of rights and full participation of persons with disabilities in mainstream society. The Act provides for reservation of 3% of funds in all poverty alleviation schemes, 3% of seats in educational institution and 3% of job vacancies for the disabled. But the main problem is that these schemes, policies and legislations are not easy to access. Lack of information is a major barrier to the progress of disabled people. Besides, the PWD Act has broadly adopted a multi-sectoral approach, which is not effective, as except the nodal Departments, no body owns the program. Very few organizations are penalized for not providing barrier-free environments. Even government organizations have not managed to meet the 3% job reservations for persons with disability. The general schools do not have facilities for children with disability thereby effectively excluding them from the first level of social interaction that would help towards developing a more sensitized and aware population. In the light of all this, the implementation of the Act needs clear focus, goals and sense of accountability. This is possible with active involvement and participation of persons with disability in mainstream activities."

According to the ancient Vedic understanding the basic human right, is the right to happiness - which means let all people be happy. Fundamental rights enshrined in the Constitution represent the basic values cherished by the people since Vedic times and they are intended to protect the dignity of an individual and create conditions in which every human being can develop his personality to the fullest extent. So, the importance of ensuring that person with disabilities have as much right to happiness and to lead a happy life, as do those who are the so-called "able bodied". Recently which was proved by the PRINCE dance troupe by winning "India's Got Talent" TV shows with two disabled persons.

In this context the great world leaders, Nelson Mandela had said, "All countries today need to apply affirmative action to ensure that the women and the disabled are equal to all of us." This sagacious advice from an elderly statesman confirms that most people tend to look upon person with disability as unequal. For, as Patricia Wright puts it, "all disabled people share one common experience, that's discrimination".

## **MEANING AND DEFINITION OF DISABLED**

In general 'disabled' means a person whenever he or she does not have ability to perform his activity in a manner considered normal for a human being. The United Nation declaration on the rights of Disabled 1995, para-I describes disabled persons as one who as a result of deficiency is unable to ensure himself or herself the necessities of normal life, in his or her physical or mental capabilities. Section 21 of the persons with disabilities Act of 1995, of India, defines disabled persons as a person suffering from not less than 40% of any disability according to medical authority's certificate. It further defines disability as blindness, low vision, leprosy cured, hearing impaired, locomotive disability, mental retardation and mental illness etc. The World Health Organization defines disability as "the fact that a person is limited in his activities or restricted in his contribution to life in society in long term as a result of alteration of one or more of physical sensory, psychological functions." The definition of disability adopted by the British Council also takes into account the social conditions, which disable a group of individuals by ignoring their needs of accessing opportunities in a manner different from others. However, it also views these social conditions as infringing upon human rights of disabled and as instances of discrimination against them. According to this definition, "disability is the disadvantage or restriction of activity caused by a society which takes little or no account of people who have impairments and thus excludes them from mainstream activities". Therefore, like racism or sexism, disability is described as a consequence of discrimination and disregard to the unique circumstances of people with disabilities."

Traditionally, disability issues have essentially been addressed as acts of charity. Persons with disabilities have suffered from a relative "invisibility", and tended to be viewed as "objects" of protection, treatment and assistance rather than subjects of rights. Equal access to basic rights and fundamental freedoms including access to health care, employment, education, participation in cultural activities, that most people take for granted, have been denied to them. Over the past two decades, a dramatic shift in perspective has taken place, and persons with disabilities have started to

be viewed as holders of rights. The United Nations High Commission for Human Rights propagates the "Rights-based approach to disability" which essentially means viewing persons with disabilities as subjects of law. Its final aim is to empower disabled persons, end to ensure their active participation in political, economic, social, and cultural life in a way that is respectful and accommodating of their difference. Followings are four core values of human rights law in the context of disability:

- **Non-discrimination:** The Dignity of each individual, who is deemed to be of inestimable value because of his/her inherent self-worth, and 1101 because she is economically or otherwise ."Useful"
- **Autonomy and participation:** The concept of Autonomy or self-determination, which is based on the presumption of a capacity for self-directed action and behaviour, and requires that the person be placed at the centre of all decisions affecting him/her;
- **Equality of opportunity:** The inherent Equality of all regardless of difference;
- **Inclusion:** The ethic of Solidarity, which requires society to sustain the freedom of the person with appropriate social supports.

### **INDIAN INITIATION FOR THE PROTECTION OF THE EDUCATIONAL RIGHTS OF DISABLED**

The Government of India has implemented the rehabilitation programmes on a massive scale. In a systematic way, the work started in the early 1980's has been instrumental in building capacities in terms of trained teacher, development of teaching and learning materials, models of context specific educational and therapeutic services, promotion of Non-Government, organizations (NGOs), extensive coverage of persons with disabilities under the scheme of providing aids and appliances, and use of technology for improvement in education. Convergence of various governmental schemes for the empowerment of persons with disabilities is another bold step initiated by the Government; A purposeful endeavor was made to include disability rehabilitation as an area of critical social development. responsibility and accountability of the national planning process from the 8th Five Year Plan onwards.

During the 10th Five Year Plan, the outlay was 14541 million Rupees, while in the 11th Five Year Plan which commenced from 2007 the focus was on the early intervention, education, employment, aiming at a barrier free and inclusive society.

Education of children with disabilities was not lost from the sight of various commissions of Government of India, The Kothari Commission (1964-1966) observed that the coveted goal of Universalisation of Elementary Education (UEE) depends upon the extent of success in bringing special groups of children within the educational network. However, not much was attempted to increase the coverage of children with disabilities in the educational network, which constituted just 0.07% of the total children at the elementary stage, which was increased to 1% with the review of National Policy on Education (1992). An integrated approach was largely adopted. Children with locomotive disabilities, low vision and blindness are enrolled in regular schools in larger numbers when compared to those with intellectual disability and hearing impairment.

This is owing to the fact that children with intellectual disability require significant adaptation in the curriculum and children with hearing impairment require teachers trained specifically in effective communication with these children. Teacher preparation in special education is very essential. Integration is to support the children in the content and process of teaching besides physical adjustments and rearrangements. Education through the integration mode has been imparted to a large number of children with disabilities by both governmental and non-governmental agencies in the country.

Integrated Education for Disabled Children (IEDC) was introduced in 1974 initially by the Ministry of Welfare and later on handed over to the Ministry of Human Resource Development, Department of education, which is being implemented in over 20,000 schools in India covering over 1,20,000 children with disabilities. IEDC has contributed significantly in incorporating the special needs inputs in the teacher education curriculum for primary and secondary teachers prepared by District Institution of Education and Training. It has also contributed in large-scale production of print and non print material.

During the 1987-1994 periods UNICEF assisted Project Integrated education for Disabled (PIED) under NCERT' (National Council of Educational Research & Training) was taken up to provide education for all children with disabilities and to allow them and their families, neighbours and non-disabled children to interact in normal settings. It aimed to develop competencies in children with disabilities so as to provide a natural basis of adult life experiences in such a manner that they can perceive themselves as contributing members to socio-economic development of the society.

Subsequently, the District Primary education Programme was launched in 1994, in which 18,000 regular teachers were trained to impart special education inputs to children with special needs. 'Janashala' is a programme of a community school aiming to support ongoing efforts of the Government of India towards UEE with special focus on the problems of girls and underprivileged

children. In 1994, the Government of India launched the District Primary Education Programme (DPEP), a centrally sponsored scheme funded by the World Bank and other foreign agencies, which emphasized on Universalisation of Elementary Education (UEE) through developmental management, a participatory process, and capacity building at all levels. DPEP covered IEDC as its component and adopted an area approach, in 18 states. Since UEE has not been achieved fully, the Government of India launched Sarva Shiksha Abhiyan (SSA - Education for All), which also made special provision for serving children with Disabilities. It had set a target to provide useful and quality elementary education to all children in the 6-14 year age group by 2010, which promotes decentralized planning with full involvement of Panchayat Raj Institutions (PRIs).

According to the Census of India 2001, out of 21.9 million persons with disabilities 10.8 million persons are literate, constituting 49 per cent. The rate of literacy by residence is 44.4% for rural and 63.9% for urban population with disabilities. The Government of India is also implementing an action plan to make mainstream education not just available but accessible, affordable and appropriate for students with disabilities. Quality of education for these children is also a concern of the action plan. The action plan will cover the following levels of educational interventions.

- Integrated child development service programmes for children in the age group of 0 to 6 years.
- A national rural health mission will cover early identification and intervention of children at risk.
- Sarva Shiksha Abhiyan for children in the age group of 6 to 14 years.
- A revised plan for Inclusive education of Children and Youth with Disabilities (IECYD) will include persons with disabilities in the age range of 14 to 18 years,

As per the National Policy, the Government of India envisages that every child with disability has access to appropriate preschool, primary and secondary level education by 2020. In keeping with the action plan, all the schools in the country will be made disabled friendly by 2020 and all educational institutions including hostels, libraries, laboratories and buildings will have barrier free access for the disabled. There are many positive and promoting features to make inclusive education a success.

## **INITIATION OF INDIAN JUDICIARY FOR THE PROTECTION OF EDUCATIONAL RIGHTS OF DISABLED**

Judiciary, over the years has played a proactive role in protecting the disabled children's Human rights to education firmly establishing on the reasoning that the plea of lack of infrastructure and personnel to teach special children is an act of avoidance and it is a flagrant violation of the statutory and constitutional mandate.

Way back in 1973 the Supreme Court of India in the landmark case of *Kesavananda Bharati Vs State of Kerala*, was of the opinion that while article 37 is addressed to the legislature, as a mandate, but so far as the Courts of Justice are concerned they can indulge in some judicial law making within the interstices of the Constitution on any statute before them. The Courts too are bound by this mandate. Both international and domestic courts have significantly contributed to disability jurisprudence usually, legal actions related to disability rights violations around the world have tended to be directed at schools and school administrations that violate the rights of children with disabilities to receive an appropriate education; against employers who deny people with disability fair treatment at the workplace, to firms, housing societies and businesses; which do not provide appropriate access to people with disabilities and against the, government for failing to protect the rights of people with disabilities.

In *J.P. Unni Krishnan, Vs Union of India*<sup>i</sup>, the Supreme Court has laid down that the right to education is embedded within the right to life and personal liberty. It is a fundamental human right of all citizens within the territory of India.

The Supreme Court in *T.M.A Pai Foundation Vs State of Karnataka*<sup>ii</sup>, approved the above dicta through an eleven-member Judge Bench by upholding, that a significant number of vulnerable groups are denied these rights on fictitious reason.

In *Dy.Secy.(Marht), Dept. of Health and Family Welfare v, Sanchita Biswas*<sup>iii</sup>, absence of reservations for persons with physical handicap in medical colleges was found by the Calcutta High Court to be an infringement of both the PWD Act, 1995 and the Constitution of India. A Division bench later upheld this ruling of the Court, first delivered by a Single Judge. The Court also provided the modalities to be adopted in selecting candidates from the PWD category.

The judgment of the Calcutta High Court found support in a flurry of judgments pronounced by Delhi High Court, Rajasthan High Court, Andhra Pradesh High Court, Madras High court and Kerala High Court. These decisions dramatically bring to the fore the role that the judiciary could play.



In a recent Case in *Dr. Raman Khana Vs University of Delhi & Ors<sup>iv</sup>*, RAMAN Khana was suffering from Hemophilic Arthropathy of right knee causing 40% physical disability. He applied in Delhi University for a postgraduate course in Community Medicine. The Court held that reservation policy as per section 39 of the Act is also applicable to post graduate courses. Court further directed that Delhi University does not have power to insist that a person who have produced Medical Handicapped Certificate from any of the nine hospitals mentioned in the order dated 8/8/2002 should appear before a Medical Board constituted by the University. AS there is only one candidate who has applied under physically handicapped category and whose certification show that he is above 40% degree of disability. The court directed the MCI and Delhi University to reconsider the policy of disqualifying candidate with disability of the upper limbs for availing the benefits enshrined in the Disabilities Act. If this were not done it would directly offend section 39 of the Disabilities Act.

Besides being fundamental and statutory right, right to education is declared to be an inalienable fundamental human right being set forth in UDHR(1948),ICCPR(1966),ICESCR(1966),CRC(1989) and specially in the DRDP(1975). The human rights violation of these basic rights was not immune to Human Rights courts' scrutiny.

In *Anka Toppo vs. AIIMS*<sup>v</sup> in 2001 the National Human Rights Commission gave the direction to Medical Council of India to take steps to examine the petitioner for the final MBBS examination as AIIMS denied the aggrieved petitioner to take examination for the same on the ground severe visual loss.

## CONCLUSIONS

Education is a necessary and increasingly vital Component in the Nation's Development. Everyone has the Right to Education according to the Universal Declaration of Human Rights affirmation. Education in India has a rich heritage and a glorious history sketching back to the ancient urban centers of learning at Taxila and Nalanda. Western education became ingrained into Indian society with the establishment of the British Raj. Education in India falls under the control of both the central government and the states, with prime responsibilities lying with the centre, and the states having autonomy over others. The various Articles of the Indian constitution provide for education as a primary need of all. Indian governments have seen education as a crucial development tool. Since Independence, the education policies of successive governments have built on the substantial legacies of the Nehruvian period, targeting the core themes of plurality and secularism, with a focus on excellence in higher education, and inclusiveness at all levels. With the ratification of the UN Convention on the Rights of Persons with Disabilities on 1st October, 2007 by the Government of India, it is expected that the National Policy will extensively cover the education of persons with disabilities and would be able to realize the goals of "Biwako Millennium Framework".

National policy considers it crucial that the development of human resources for providing education to all children with disabilities in the general education stream is a bounden responsibility of the state. Many milestones have been left behind in the path, significant achievements have been made and opportunities have been created for the disabled. Little is been done but vast remains to be done. New millennium might signify many promises to many people but what it should signify to all is that in terms of disability rehabilitation, new and emerging perspectives in special education cannot be ignored.

In response to the recommendation of international agencies the government efforts to provide services to children with disability, as revealed by 2003 census account for nearly 10% of the individual persons with disability as the beneficiary. Over 90% remain unserved. In this context it can be said that there are lacunas in the government efforts as a result of which the programmes and recent policies like, the 2003 Education For All (EFA) programme and recent policy initiatives, the Right to Education Bill 2005, the Action Plan for Inclusion in Education of Children and Youth with Disabilities (IECYD) 2005 and the National Policy for Persons with Disabilities 2006, are not yet been fully realized.

The effective responsiveness to these programmes needs government and civil society's honest concerns. To quote former President Dr. Sankar Dayal Sharma 'through human rights education we create an environment in which human right violation can be minimized. For full development as human beings, exercise and enjoyment of Human Rights by all the people is necessary. Human Rights and fundamental freedoms help us to develop our intrinsic qualities, intelligence, talents and conscience to meet our material and spiritual needs. It is needless to state that without the recognition of the right to education, realization of the right to development of every human being and nation is not possible'. Article 26 of the Universal Declaration of the Human Rights (1948) inter alia states, that 'education shall be directed to the fullest development of the human personality and to the strengthening of respect for human rights and fundamental freedom. It shall

promote understanding, tolerance and friendship among all nations, social or religious groups and shall further the activities of the United Nations for the maintenance of peace'. Historically, education is an instrument of development and an important factor for social change. The knowledge of the rights and freedoms, of oneself as much as of the others, is considered as a fundamental tool to guarantee the respect of all human rights for each and every person.

The time is now ripe for 'social innovation' that is, the normalization, integration, equalization and inclusion of the disable person in the mainstream education. Restorative, rehabilitative, and participative support with dignity is needed to bring the differently abled person back into the mainstream of social development realizing their potential and contribution to society.

#### REFERENCE

- [1] [http://www.caluniv.ac.in/academic/education\\_journal/7%20Education%20of%20Children%20with%20Disabilities%20in%20India%20Concern%20and%20Policy%20Perpective.pdf](http://www.caluniv.ac.in/academic/education_journal/7%20Education%20of%20Children%20with%20Disabilities%20in%20India%20Concern%20and%20Policy%20Perpective.pdf)
- [2] Anya Bhuban Bengali magazine, a quarterly publication of SANCHAR, which deals with different issues related with disability, 1st issue of 2nd year June 2005. [www.sanchar-india.org](http://www.sanchar-india.org)
- [3] Dr Sruti Mahapatra, an article on Dittferenty-abled women should get a due place in the women reservation Bill, July 18, 2009. [www.orissadiary.com](http://www.orissadiary.com).
- [4] J. S.B. Sinha, Article on disabilities law vis-A-vis human right, [www.ebc.india.com](http://www.ebc.india.com).
- [5] Rajiv Gandhi foundation, Home page, New Delhi on Disabled person's welfare.
- [6] L. Govinda Rao, "Education Of persons With intellectual disabilities in India",
- [7] Salud publica Mex vol.50, suppl.2, Cuernavaca, 2008.
- [8] AIR 1973 SC 1461, Anuradha Mohit, Meera pellaia & Pratiti Rungta, Dossiers prepared on rights of disabled, published through NHRC, New Delhi, November 2006. (2002) 8 SCC 481
- [9] AIR 2000 Cal 202
- [10] (2003) 106 DLT 97
- [11] 2003 V AD (Delhi) 343
- [12] Judgments on Disability Issues Case Digest, 2005- By Office of the Chief Commissioner for Persons with Disabilities,

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