



An Exposition of Right to Education of Children with Disabilities

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Abstract

Education is a basic human right recognised worldwide. Education is a tool which helps in the overall development of the human being. It is an enabling tool to live an enriching life and satisfy our basic needs. It has now received the status of a Fundamental Right under Article 21A of Part III of the Constitution of India. This Right to Education is made enforceable by the Right of Children to Free and Compulsory Education Act, 2009. Persons with disabilities are a disadvantaged group of people who suffer from impediments in their daily activities. The State is duty bound to ensure that rights of persons with disabilities are protected. The Parliament of India has passed the Rights of Persons with Disabilities Act, 2016 to fulfill the obligations laid down in the UN Convention on the Rights of Persons with Disabilities. This research paper will look into the right to education conferred on the children with disabilities at the international and national levels. It will elucidate the various provisions with respect to the right to education as laid down in the Right of Persons with Disabilities Act, 2016. It will also focus on the current status of the literacy rate of children with disabilities.

Keywords

Person with disability, Right to education, Elementary education, Person with benchmark disability, children with disability.

Introduction

Every human being has the right to live with dignity and have equal opportunity to access the basic facilities provided to them. They possess basic human rights recognised all over the world. They are entitled to enjoy freedom and autonomy. Persons with disabilities suffer from different constraints which makes it difficult

for them to engage in societal interactions. Persons with disabilities also have the same basic rights as others. They are also entitled to enjoy autonomy and must have the freedom to make their own decisions. It is important to recognise the contribution that they can make towards a country's growth and hence protect their rights.

Disability may be said to be a limitation or impediment in carrying out day to day functioning. It may be in the form of physical, mental, social or economic barriers. It limits the person's ability to interact with people and impedes his ability towards social engagements. According to the 2011 census, India has a population of 2.68 crore persons with disabilities which constitutes 2.21% of the total population. Out of the total, 1.5 crore males and 1.18 crore females are disabled in India. (Disability in India 2021)

It is the State's duty to protect the rights and interests of the people with disability. Education is considered as one of the fundamental human rights. Education helps us in our overall development and enables us to acquire the necessary skills to get employment. So, it is one of the most important things which should be made accessible to everyone. The State being a welfare State must provide the basic educational facilities to everyone. A child must not be denied access to education because of any disability. The State must make provisions to provide education to all the children with disability. This category of children must not remain without education. Education will empower them. Education will equip them with the skills which will help them get over the constraints faced by them due to their disabilities. There is a need of inclusive education system where education is made accessible to all the children.

There are many factors which creates roadblocks in the fulfillment of the right to education of the children with disabilities in India. There are impediments like perception of parents, societal attitude, lack of proper infrastructure and support system amongst others. (Limaye 2016) Inclusive education has been understood to mean that all children can learn at some level according to their capacity. It is an approach which makes education more in tune with the learning requirements of the children. So education should be made accessible to all children. (Rai 2011) The real purpose of inclusive education is to provide and make education

accessible to all the children especially the disadvantaged groups like children with disabilities, girl child, children belonging to the Scheduled Caste or Scheduled Tribes. In spite of various Governmental policies, many challenges still remain. (Kumar 2017) Family plays an important role in the educational development of the children with disabilities. The family members also acknowledge the importance of education in the empowerment of the children with disabilities. (Gulnaz Fatima 2019)

Right to Education of Children with Disabilities at the International Level

The United Nations adopted the Convention on the Rights of Persons with Disabilities on 13th December 2006. The purpose behind adopting the Convention was to promote, protect and ensure enjoyment of human rights and basic freedoms by persons with disabilities. According to Article 1 of the Convention, "persons with disabilities include those who have long term physical, mental, intellectual or sensory impairments." These impairments make it difficult for them to participate in society in the same way as others. The aim is to enable them to overcome these impediments and have an inclusive environment for all human beings. (United Nations Convention on the Rights of Persons With Disabilities (UNCRPD) 2018)

The Convention stresses upon respecting the persons with disabilities and protecting their dignity. It makes provisions about equal opportunity and accessibility. It imposes an obligation on the State to eliminate any kind of discrimination against the persons with disabilities.

The Convention lays down special principles with respect to children with disabilities under Article 7. The State is obligated to ensure that children with disabilities enjoy basic human rights and freedoms. The children with disabilities have a right to express their views freely on matters affecting them. Every State action concerning the children with disabilities must keep the best interests of these children.

Article 24 of the Convention recognises the right to education of the children with disabilities. The State is obligated to provide an inclusive education system. The children with disabilities must get an opportunity to develop their personality, talent and abilities. The State shall ensure access to education to them. Any facility of free and compulsory primary education must be provided to these children as well. The State shall also provide a support system required by them to make education accessible and effective. The State must take appropriate steps to ensure that education is provided to the children with disabilities in a manner which is most effective. Means and modes of other forms of communication have to be taught to the children with disabilities. The States shall also employ teachers who are qualified in these other modes of communication to teach the children. The State shall ensure that higher education, vocational training, lifelong learning, is made accessible to them without discrimination. The State can make provisions for accommodation of these persons with disabilities to facilitate them to go for further education.

India ratified the Convention on 1st October 2007. It means that India is bound to fulfill the obligations laid down in the Convention. India had to implement the obligations into its municipal laws. Pursuant to it, the Rights of Persons with Disabilities Act, 2016 has been passed by the Parliament of India.

Rights to Education of the Children with Disabilities- Prevalent Laws in India

Constitution of India

The principle of equality permeates throughout the Constitution of India which is considered as the supreme law of the land. The Constitution of India in its Preamble resolves to secure equality of opportunity and status amongst its citizens. It declares equality before law and equal protection of law to every person as a fundamental right under Article 14 of Part III. So, the persons with disabilities are to be given equal status and their rights shall be protected under the Constitution. Article 21 ensures the right to live with dignity. The personal liberties of the people are also protected. Part IV of the Constitution of India lays down the Directive Principles of State Policy. Although these principles cannot

be enforced in the Court of Law, but they lay down fundamental principles on governance. The State has been given guidelines to make provisions for the persons with disabilities. Article 41 directs the State “to make effective provisions for securing the right to work, to education and to public assistance in cases of disablement of a person.”

The Constitution in its original document contained the right to education as a Directive Principle of State Policy. Under Article 45, the State had to make provisions “to provide education for all children from the age of 6 years till they completed 14 years.” It being unenforceable, the State was not bound to provide education to every child. The capability of the State to provide education to children was limited by its economic capacity. In the landmark judgment of *Unni Krishnan v. State of Andhra Pradesh* [(1993) 1 SCC 645], the Supreme Court recognised the right to education as being part of Right to Life under Article 21 and hence a fundamental right which can be enforced by the Court.

Pursuant to it, the Constitution (Eighty-sixth Amendment) Act, 2002 inserted Article 21A. It laid down that “the State shall provide free and compulsory education to all children of the age of six to fourteen years in a manner determined by law.” A change was made to Article 45 as well which now directs the State to provide early education to children till 6 years of age. Therefore, the right to education is now a Fundamental Right which is enforceable in the Court.

Right to Education Act, 2009

The Parliament of India passed the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter the RTE Act). It provides for free and compulsory education to children from the age of six years to fourteen years. The RTE Act is a social welfare legislation which makes elementary education a basic right of every child. The State is now duty bound to provide free and compulsory education up to class eight. The RTE Act makes certain special provisions with respect to children with disabilities. It defines “a child belonging to a disadvantaged group to mean a child with disability among others under Section 2(d).” A child with disability bears the same meaning as given under different Acts concerning disabilities.

Section 3 of the RTE Act provides that “every child of the age 6 years and 14 years shall have the right to free and compulsory education in a neighborhood school till the completion of elementary education.” This right is also given to children belonging to a disadvantaged group. Elementary education means education from first class to eight classes. No fees or charges or expenses shall be collected from any child who will prevent the child from pursuing and completing his or her elementary education.

The RTE Act imposes various obligations on the Government. Under Section 8(c), the appropriate Government shall ensure that no discrimination is made against the children belonging to a disadvantaged group. It also has to ensure that the children belonging to a disadvantaged group are not prevented from pursuing or continuing elementary education on any ground.

The RTE Act also imposes a duty on the local authorities such as municipality and panchayat to ensure that these children are not discriminated against and prevented from enrolling and continuing elementary education as provided under Section 9(c).

Under Section 12(c) of the RTE Act, a school belonging to a specified category or an unaided school not receiving any aid or grants shall admit at least twenty five percent of the total strength of the class, children belonging to weaker sections and disadvantaged groups in the neighborhood. Such school shall provide free and compulsory education till its completion.

Right of Persons with Disabilities Act, 2016

The Persons with Disabilities (Equal Opportunities, Protection of Rights, and Full Participations) Act, 1995 was enacted by the Parliament of India to implement the Proclamation issued by the Economic and Social Commission for Asia and Pacific Region in the year 1992. The Act was a social welfare legislation which aimed at early detection and prevention of disabilities. It also made provisions for education and employment of the persons with disabilities. It provided reservation to the persons with disabilities.

The Rights of Persons with Disabilities Act, 2016 (hereinafter the RPD Act) was passed by the Parliament to give effect to the UN Convention on the Rights of Persons with Disabilities. India being a signatory to the Convention, after its ratification we were bound to implement the obligations in our domestic law. Many of the principles and obligations laid down in the Act are taken from the provisions of the Convention. Many definitions bear resemblance with the definitions given under the Convention as well. It brought major changes to the disability law in India. It increased the list of conditions which constitute disability. The RPD Act provides an expansive definition of mental illness. The appropriate Government has been conferred with many duties under the Act to ensure that persons with disability enjoy the right to equality and live life with dignity. The RPD Act aims at inclusive education, stresses upon vocational training and provides for self-employment of the persons with disability. The appropriate Government shall also come up with necessary welfare schemes to support the persons with disabilities.

Section 2(s) of the Act defines a person with disability as “a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others.” The RPD Act broadly categorises disability into four types, namely, physical impairment, mental impairment, intellectual impairment and sensory impairment. Such impairment needs to be long term to constitute a disability. This impairment must impose hindrances on that person in his or her interaction with the society on equal footing like others.

It further defines barriers under Section 2(c) to mean “any factor including communicational, cultural, economic, environmental, institutional, political, social, attitudinal or structural factors which hamper the full and effective participation of persons with disabilities in society.” So the RPD Act stresses upon the point that a person with disability suffers more due to his or her disability along with the pre-existing barriers or constraints that are prevalent in the society. These barriers create an extra layer of impediment for these people in their ability to take part effectively in the society along with others.

The RPD Act defines persons with benchmark disability under Section 2(r) as “a person with not less than forty percent of a specified disability where specified disability has not been defined in measurable terms and includes a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority.” It has made special provisions for persons with benchmark disabilities. A person with benchmark disability needing higher support is termed as a person with disability having high support needs. It has also made special provisions for this category of person as well.

The RPD Act aims at inclusive education which is an education system where children with or without disability learn together. The teaching learning system is adapted according to the needs of the different types of children with disabilities. The educational institutions are tasked to provide the children with an environment where they can learn and grow together. The infrastructures provided by the educational institutions are also to make disabled people friendly.

It is the duty of the Government to ensure that persons with disabilities are able to enjoy the right to equality and dignity equally with others. The person with disability is not discriminated against due to his or her disability. When we talk about discrimination in relation to disability, according to Section 2(h) of the RPD Act, it means “distinction, exclusion, restriction on the basis of disability which is the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field and includes all forms of discrimination and denial of reasonable accommodation.”

The Government must ensure that no person is deprived of his life and personal liberty on the ground of disability. It will also take necessary steps to provide accommodation to the person with disability. The RPD Act empowers the appropriate Government to make special provisions for women and children with disability. It will ensure that they enjoy their rights equally with others. In consonance with the UN Convention, the Act empowers the appropriate Government to ensure that the children with disabilities shall be able to express their opinion freely on matters affecting them.

Chapter III of the RPD Act makes provisions for regulation of the education of children with disabilities. Section 16 enumerates the various duties of the educational institutions. These duties are provided for all educational institutions receiving funds or recognised by the appropriate Government or the local authorities. They shall work towards providing an inclusive education for the children with disabilities. It is the duty of the educational institutions to admit children with disabilities without any discrimination and provide education and equal opportunities for sports and recreation equally with other children. It further imposes a duty to make the basic facilities accessible to them. The educational institutions have to provide a conducive environment for the development of the children with disabilities. Necessary arrangements shall be made for children who are blind or deaf or both to impart education in the modes and means of communication which is appropriate for these children. The educational institutions shall try to detect specific learning disabilities in children and take necessary pedagogical steps to overcome the same. They have to monitor participation, progress, and completion of education for every child with disabilities. They shall provide transportation services and reasonable accommodation to the children with disabilities.

Section 17 of the RPD Act lays down the various steps needed to be taken by the appropriate Government and local authorities to promote inclusive education. They shall conduct surveys to identify children with disabilities to ascertain their needs and the extent to which they are being satisfied. They shall train and employ teachers who are qualified in sign language and Braille. They shall also train and employ teachers who are trained in teaching children with intellectual disability. It encourages the Government to employ persons with disabilities as teachers wherever they fulfill the necessary qualifications.

The appropriate Government should establish teacher training institutions and ensure that it trains professionals to support inclusive education at all levels. They should also promote use of alternative modes and methods of communication like sign language and Braille. The RPD Act makes special provisions with respect to children with benchmark disabilities. The appropriate Government and local authorities shall provide books and learning materials to children of benchmark disabilities free of cost till the age of 18 years. They shall also provide scholarship

in appropriate cases to this category of children. They are empowered to make suitable modifications to the curriculum and examination system to help the children with disabilities, like giving extra time to complete the examination paper or providing facility of a scribe. Finally, these authorities shall engage in research work to improve learning. They shall also promote and ensure participation of persons with disabilities in adult education equally with others.

Chapter VI of the RPD Act makes special provisions for children with benchmark disabilities. The RPD Act provides that every child with benchmark disability between the age of six and eighteen years shall have the right to free education in a neighborhood school or special school of his or her choice. The appropriate Government and local authorities shall ensure the enforcement of this right. It makes provision for reservation of seats of not less than five percent for the persons with benchmark disabilities in government higher education institutions or those higher education institutions receiving Government aids. These persons shall also be given an upper age relaxation of five years for admission in higher education institutions.

Although the RPD Act makes many benevolent provisions for the persons with disabilities especially with respect to education, still it falls short in many places. The Act mentions mental illness as a condition for disability. But it fails to meet the special needs of persons suffering from mental illness and their families. For the effective implementation of the Act, necessary guidelines should be provided. The RPD Act requires the persons with benchmark disabilities to seek support from the appropriate government or the local authorities. They may take help from any person or organisation in seeking the same. It lays down the onus on the person with benchmark disabilities to seek support. In doing so, the Act is also relying on the work of non-governmental organisations heavily. Further on receipt of application from such person, the appropriate government refers it to an Assessment Board constituted by the Central Government. Upon receipt of the report, necessary steps shall be taken to provide support to the person with benchmark disability in accordance with it. It becomes a cumbersome process and may deter a person with benchmark disability from seeking assistance from the government. The RPD Act if implemented properly shall provide for an inclusive

education where the needs of the children with disabilities shall be fulfilled. It will also make the Right to Education a reality for children with disabilities.

Right to Education- Present Situation

Despite of legislation providing free and compulsory education to children and making special provisions for the children with disability, the literacy rate remains poor. According to the 2011 Census, 55% of the total disabled persons are literate. 13% of the disabled population has completed secondary education but not graduation. Only 5% of the disabled persons are graduates and above. If we look at the literacy rate of disabled persons based on gender, then 62% of the male disabled and 45% of the female disabled persons are literate. 16% of the disabled male population and 9% of the disabled female population have completed secondary education but not graduation. Only 6% of the disabled male persons and 3% of the disabled female persons are graduates and above. The percentages of literates in urban and rural areas are 67 % and 49% respectively. 20% of the disabled populations in urban areas and 10% of the disabled population in rural areas have completed secondary education but not graduation. Only 10% of the disabled population in urban areas and 2% of the disabled population in rural areas are graduates and above. A total of 61% of the children with disabilities between the age of five to nineteen years are attending educational institutions out of which 65% are in urban areas and 60% are in rural areas. Among the children with disabilities attending educational institutions, the percentage of male children is 57%. Between the age group of five to nineteen years, the rate of attendance is around 60% for the female disabled children and 62% for the male disabled children.(Disability in India 2021)

There is a need to change the approach of all the stakeholders in this situation. The Government and local authorities must take a proactive stance to ensure accessibility to quality education. Educational institutions must work towards making the education system inclusive. It should provide a conducive environment for children with disabilities to learn and prosper. The parents and guardians of children with disabilities must ensure that their children are enrolled in schools and reap the benefits of the facilities provided to them. Qualified and trained teachers must be engaged by the educational institutions to fulfill the

needs of these children. Proper training should be provided to the teachers to equip them with the necessary skills to handle the needs and demands of children with disabilities. The educational institutions should also employ persons with disabilities as teachers if they are qualified. These teachers will become role models for the children with disabilities and ensure their retention and completion of education. There is scope for including children with learning disabilities within the purview of legal provisions as well. The educational institute shall strive towards providing the children with an inclusive education as well as inclusive infrastructure. Provisions like lifts for easy access to classrooms, ramps in entry to the building, use of braille for signages are some of the examples which can make the infrastructure of a school more inclusive. The schools also face financial challenges in providing training, infrastructure and special facilities to the children with disabilities.

Prior studies have shown that due to our International commitment and legal provisions, there have been an increase in the number of children with disabilities getting enrolled in schools. In spite of it, there is a lack of teachers qualified to fulfill the special needs of children with disabilities. This clearly shows that in spite of provisions being made for training the teachers in special skills, there is a dearth of qualified teachers.(Naru Gopal Dey, 2023). It is more challenging to increase the enrollment of children with disabilities in rural schools. Children in rural India already face many impediments in accessing basic education facilities. The difficulty increases for children with disabilities. India has a very progressive attitude towards children with disabilities with various laws for their upliftment. But still we can see that children with disabilities face diverse challenges in accessing education.(Johansson and Nidhi Singhal, 2021). Some suggest that there is lack of sufficient data for a better understanding of the challenges faced by the children with disabilities. Unless the real challenges are understood, it is difficult to formulate an effective solution to resolve the problem. Governmental policies should be directed towards making progressive steps towards an inclusive education.(Singal 2023) The availability of inclusive infrastructure and facilities at schools also helps in providing inclusive education. Inclusive infrastructure makes education accessible to the children with disabilities. (Omkarshri Panda 2023) There is also a stark difference between the educational facilities and availability of resources for inclusive education in urban and rural areas. There

is willingness amongst the stakeholders to provide inclusive education but the facilities still fall short of the expectations.(Richard Rose 2021)

Conclusion

The Sustainable Development Goal 4 is “to ensure inclusive and equitable quality education and promote lifelong learning opportunities for all.” Target 4.5 states that “the State Parties shall eliminate gender disparities in education and ensure equal access to all levels of education and vocational training for the vulnerable, including persons with disabilities, indigenous peoples and children in vulnerable situations.” Target 4.a asks the State Parties to “build and upgrade education facilities that are child, disability and gender sensitive and provide safe, non-violent, inclusive and effective learning environments for all.” The State parties are obligated to achieve the goal and its various targets by 2030.(Goal 4 | Department of Economic and Social Affairs 2023) The recent SDG Indicator 2023 states that there still remain challenges to achieve this goal and at the rate in which the work is moving, it will be insufficient in attaining the goal by 2030. (Sustainable Development Report 2023)

Persons with disabilities face a lot of discrimination and prejudices. The basic infrastructure and public facilities are still inaccessible, furthering their difficulties. Education will enable the persons with disabilities to gain confidence. It will help them achieve their true potential and help them to be actively involved in societal interaction. It will enable them to be independent. They will secure employment and hence get economic independence. Education is an empowering tool. But acquiring education itself has challenges. The lack of educational institutions in the neighbourhood, the lack of sanitary washrooms and clean water puts various difficulties in accessing these basic human rights. Even with the legislation, we still find these problems existing everywhere in the country. All these problems become a challenge for children without disabilities to go to educational institutions. There are difficulties in the retention of children in schools. Female children drop out of schools due to lack of basic sanitary provisions in schools. Add to it the barrier of disabilities, the problems multiply. Our society still looks at disability as an impairment. People’s attitude towards persons with disabilities is

poor. They are looked down upon and are thought to be incapable of performing any work.

It is the need of the time to enable the persons with disabilities with the most powerful tool i.e. education. We should strive to make education more accessible to everyone. The educational institutions should provide for an inclusive environment to support the children with disabilities' needs and necessities. The Government and local authorities should set up facilities for training more teachers equipped to handle the needs of the children with disabilities. More facilities should be provided to these children in terms of different modes and methods of imparting education. The children with disabilities should be taught these special methods like sign language and braille. Resources like audio books, books in braille, e-resources for easy access to knowledge from home and infrastructure facilities like ramps for easy access, disability friendly washrooms should be made compulsory in educational institutions. More awareness programs must be conducted educating people about these legal provisions and various Government schemes.

Legal aspects apart, common sense also indicates that an under-developed section of the society in this case the children with disabilities might lead to a consistent drain on the economy and would prevent the complete utilisation of its economic potential. Morally speaking, even from a utilitarian perspective, maximising the happiness of the people should ideally involve enabling or empowering the people facing disability to successfully pursue their own happiness. From a deontological view, it is imperative that each citizen gets their rights, and the onus is not on the individual to seek their rights, but rather for the society and the government elected by the society to ensure that the rights of each citizen are delivered as promised. The idea of growth of the nation and the society can only be complete when the challenges faced by the sections of the society are identified and appropriate measures are taken to overcome the challenges. Therein lies the hope of a developed nation.

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