

Review on the Challenges Faced by the Children with Disabilities and Need for Special Education Law in India

Vardhan Prataprao Desai¹ and Dr .Sharvari Vaidya²

LL.M 4 th Semester¹

Associate professor, Coordinator LL.M Department²

School of Law, Sandip University, Nashik, Maharashtra, India

vardhandesai888@rediffmail.com and sharvarivaidya@sandipuniversity.edu.in

Abstract: *Disability is one of the most serious barriers in the education of children across the globe. There are near about 240 million children with disabilities worldwide. Disables have to face a large number of obstacles every day and experience poorer health outcomes, have less access to education and work opportunities. To overcome with these problems, students with disabilities and special needs may need individually planned and systematically delivered teaching techniques. They require special education and related services that are as diverse as the individual children themselves and this is known as special education.*

Like all children, children with disabilities have ambitions and dreams for their futures. Like all children, they need quality education to develop their skills and realize their full potential. Yet, children with disabilities are often overlooked in policymaking, limiting their access to education and their ability to participate in social, economic and political life. Worldwide, these children are among the most likely to be out of school. Or have to go to a special school and be separated from normal children .They are facing persistent barriers to education stemming from discrimination, stigma and the routine failure of decision makers to incorporate disability in school services.

Present laws and policies are not adequate to solve the problem of the disable or to give them equal status like normal students. The main object of this paper is to focus on the issue of need of special education law for disable students, which moves them from separate education system to mainstream of regular students because every child has the right to a quality education and learning; as rightly said by Nelson Mandela, "Disabled Children are equally entitled to an exciting and brilliant future".

Keywords: Disability, children, special education, law.

I. INTRODUCTION

In this modern era with the advancement of technology in each every field has changed the face of the society but the way of thinking of people still remains the same. Society especially conservative ones like the Indian society still often neglect and disregard the children and the people that have some kind of learning disabilities. Due to this, most of the time they receive negative response and suffer from criticism, they have to attend their special school. Regular school managements have not ready to give them admission in regular school with normal children, because of which they are not be able to develop any kind of positive attitude to the outside world and even able to receive the basic education, which is one of the fundamental rights of every child. It is the right of every child to receive equal and same opportunity for receiving basic education.

According to the UN Development Programme, around 15% of the world's population lives with disabilities. They are the world's largest minority. In countries having life expectancy over 70 years, individuals spend about 8 years or 11.5% of their life with disabilities. 80% of persons with disabilities live in developing countries¹. As per 2011 census, 2.1% of

¹ www.un.org

India's population, about 2.68 Cr people have disabilities. It's certainly much higher in 2022, with 13.4 million in 15-19 age group².

Definition and meaning of the Issue: Disability means the lack of individual functional capacity which can be performed by other individuals in absence of impairment. They may have inability of hearing, visual, locomotive, speech and psychological incapacity. It is also true that the impact of disability is not only on the organs of the body but it also affects the functioning of the individual in the society. These children have special needs; they need more attention than normal children. They need special education.

Special education provides children with identified disabilities specialized instruction designed to meet their unique learning needs, giving them the opportunity to develop to their fullest potential. Special education is not necessarily a special classroom but a well thought-out program of collaborative interventions leading to educational goals set forth by a multidisciplinary team. They require special types of teaching approaches or care. Special education programs work to help individuals develop not only their academic skills, but also the personal skills that help them become self-sufficient members of the community.

With this pious prospective various International efforts have been made for the education of the disabled students and also enumerated special laws both at international and national level. The important milestone in the field of international effort for ensuring equal treatment among humans is the Universal Declaration of Human Rights, 1948(UDHR).³The United Nations Convention on Rights of Persons with Disabilities (UNCPRD) was adopted in 2006 which has played a pivotal role in recognising the rights of Children With Disabilities the worldwide.⁴

Historical perspective: During the colonial period the Christian Missionaries as a part of the charity, had established special schools for the special children with disabilities. The Special Education Approach emerged during the late 19th century period. India after Independence has focused on the rehabilitation, education, and social equality which have resulted in the growth of special education in India. In India special education as a separate system of education for disabled children outside the mainstream education system evolved way back in 1880s. The first school for the deaf was set up in Bombay in 1883 and the first school for the blind at Amritsar in 1887. In 1947, the number of schools for blind increased to 32, for the deaf 30 and for the mentally retarded. This has further been supplemented by the availability of specialized personnel for the task.

The Supreme Court of India in *Jeeja Ghosh v. Union of India*⁵ has held that children with disabilities has the constitutional right to live with dignity and without any discrimination and no authority can violate their rights.

In *Pramod Arora v. Governor of Delhi*⁶,

In this judgment Delhi High Court recognized the difficulty faced by Children with Special Needs (CWSN) in getting admission to mainstream schools with special educators and disabled friendly facilities. The High Court accordingly held that private schools had a legal obligation to provide 3% reservation to CWSN in their seats.

In *Vishesh Shikshak Association vs State of U.P.*⁷ and In *Rajneesh Kumar Pandey vs Union of India*⁸, the Court also opined that the fact that "children with disabilities" faced even greater relegation than other groups of children from disadvantaged groups and therefore, for their progressive education Government have to take special efforts in the view of the right to equality under Article 14.

²www.Censusindia.gov.in

³<https://www.un.org/en/about-us/universal-declaration-of-human-rights>

⁴<https://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>

⁵ (2016) 7 scc 761

⁶ (2014) 5 HCC (Del) 215

⁷ (2010)

⁸ (2016)

Present Legislation and Policies in India: The Constitution of India clearly states in the Preamble that everyone has the right to equality of status and of opportunity. The Article 41 of the Directive Principles of the Indian Constitution supports the right to work, education and public assistance in certain cases including disablement. Further, Article 45 commits to the provision of free and compulsory education for all children up to the age of 14 years. Based on this, the Constitution (86th Amendment) Act 2002 has been enacted by the parliament making education a fundamental right of all children in the age group of 6-14 years. Moreover the 93rd Amendment to the Constitution of India (now renumbered as the 86th), passed by the Lok Sabha on November 28, 2001, makes it mandatory for the government to provide free and compulsory education to “all children of the age of 6-14 years”, with its preamble clarifying that “all” includes children with disabilities as well. Article 15(1) and (2) specify that there shall be no discrimination against any Indian citizen based on caste, religion, place of birth, etc. Article 21 provides the right to life and personal liberty, including disabled persons.

Apart from this the Mental Health Act, 1987, The Hindu Succession Act, 1956 and The Indian Succession Act, 1925 contains many provisions for differently-abled persons ensuring that they get equal respect in society. In 2016 the government enacted the Rights of Persons with Disabilities Act, 2016 to give effect to the Convention on the Rights of Persons with Disabilities, 2006.

Current scenario:

Though Indian constitution has aimed to provide equal status and education to all the children including disable person also, however, it is very shameful for the society in current scenario in India, still people consider special education to disable means segregated education which means separate them from mainstream of regular students.

This approach is based on the principle of segregation of the disable children from other children on the basis of their special needs. This approach believes disabilities need to be taught separately outside the mainstream as their behaviour may negatively affect the progress the normal students. Consequence of this segregation of disable students has psychological impacts and the loss of confidence that they are not fit to survive in the society.

It is also true that because of less educational facilities they further suffer from unemployment which results in the lower standard of living, therefore across the world people with disabilities have less economic participation and higher rates of poverty than people without disabilities.

Segregated education deprives children with disabilities from access to their community. Segregated education approach is anti to the commitments of India in International Human Rights law as well as Constitutional law and statutory frameworks. For that Inclusive education is the most effective option to give all children a fair chance to go to school, learn and develop the skills they need to thrive. Inclusive education means all children in the same classrooms, in the same schools. It means real learning opportunities for groups who have traditionally been excluded only because of disabilities.

II. CONCLUSION

It is the paradox of Indian society that in spite of progressive efforts at International and national level, the Indian society is not ready to give them helpful hands to the children with disabilities. Apart from all efforts of the state, school managements also are unwilling to admit such children, by giving the reason that upliftment of disable students is the most controversial issues and the parents of normal students also oppose the idea of coeducation with disable children.

Approximately, sixty five percent of Indian population lives in rural areas without any provision of special education to disable children. Although there are many conventions, legislative provisions for disabled persons, but the implementation of those provisions is missing. For that proper measures should be taken to ensure that the laws are being implemented without fail. For that, at the school level, teachers must be trained, buildings must be refurbished and students must receive accessible learning materials. At the community level, stigma and discrimination must be tackled and individuals need to be educated on the benefit of inclusive education.

Effective special education is directed by both state and federal laws that protect the rights of the child and encourage certain universal core principles. Special-needs children are entitled to a free and appropriate education with related services in the least restrictive way for that, at the national level, Government must make straight laws and policies

with the Convention on the Rights of Persons with Disabilities, and regularly collect and analyse data to ensure children are reached with effective services and special education laws for inclusive education should be made.

There is an urgent need to move away from the segregated model of education such as special schools, and towards a system supporting social inclusion of children with special need in mainstream education which will be possible only with the help of effective laws along with their proper implementation.

Only then every child will be able to get quality education and equal rights as enshrined by constitution of India.

REFERENCES

- [1]. Hurwitz M D (2008). The review of special education law. *Pediatric Neurology*. 39(3)
- [2]. Cullim, L.M (2016). current problem in pediatric and Adolescent health care. *Pediatric community mental health*, 26(3).
- [3]. Zirkel P A (2014). The law in the special education literature a brief legal critique. *sage journal forum*, 39(2)
- [4]. https://bice.org/app/uploads/2014/10/unesco_world_declaration_on_education_for_all_jomtien_thailand.pdf
- [5]. <http://sdgeducation2030.org/the-goal>