

## Protection of Right to Education of Persons with Disabilities

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### ABSTRACT

Right to Education is one of the most important rights recognized by the constitution of India under Article 14, 15, 19 and 21. This right is very essential for persons with disability as it can contribute in elimination of discrimination against this section of community also this right contributes in enhancing the economic, social and cultural rights. International Human rights puts obligation on states to respect the rights for PWDs and implement the rights at national level to make the rights meaningful. UNCRPD laid down the foundation of present legislation of 2016 for protection of rights of PWDs. further, the apex court has also played an important role in implementation of provision of The Rights of Persons with Disabilities Act 2016. In its recent judgement The Apex court has declared India, 'A society for all' and also instructed all educational Institutes to implement the provisions of section 32 and reserve 5 % of seats for PWDs.

### 1.INTRODUCTION

Right to education is the most important right recognized under the international human right laws. Attainment of this right contributes in enhancing other rights which includes economic, social and cultural rights for e.g. right to equality, right to livelihood and right to vote etc. It is essential for every human being because it improves self confidence and social participation. This right is very significant for the persons with disability as they are subject to discrimination. It has been estimated by WHO that more than 1 billion people suffer from some form of disability and 90% of persons suffering from disability in developing countries do not go to school. Traditionally it was believed that PWDs need Special schools rather than general educational institutes which excluded them from general educational system. Children with disabilities have very low rates of initial enrolment. Even if they do attend school, children with disabilities are more likely to drop out and leave school early without transitioning to secondary school and beyond (GCE, *Equal right, equal opportunity report*, 2014). Children with disabilities are also at increased risk of school violence and bullying, preventing the safe enjoyment of their right to education (UNESCO, *School violence and bullying: Global status report*, 2016).

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International Human right law intends to tackle the issue of right to education of PWDs by putting obligation on the nations to respect and protect the right to education of PWDs through the implementation of Inclusive education system.

## **THE INTERNATIONAL LEGAL FRAMEWORK FOR PROTECTING THE RIGHT TO EDUCATION FOR PERSONS WITH DISABILITIES**

There are a number of international instruments which lay down standards for protecting the educational rights of Person's with disability. The right to education is considered in itself the human right and required for the exercise of other Human Rights. The Persons with disability have less access to mainstream Education system and thus face difficulty into proper execution of their Right to education guaranteed to them under different laws. From time to time various different international instruments recognized their right to education as Fundamental Human right.

### **United Nations Declaration of Human Rights declared that right to education is a Fundamental right: 1948**

The UNDHR was adopted by General Assembly on 1948. It was the first international document which was extraordinary in the sense that it talked about the rights and freedoms which is available to all the persons without any discrimination or distinction on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status<sup>2</sup>.

The most relevant provision relating to right to education is mentioned under Article 26. Article 26 Talks about free education at Elementary and Fundamental level, which is available to everyone irrespective of the fact that Person is suffering from any disability. The Article makes Elementary education compulsory while Technical and Professional education should be generally available and higher education is accessible on the basis of merit. Education system should help an individual in attaining and strengthening Human right and Fundamental Freedoms. This article also gives Right to Parents to decide for their child the kind of education that should be given to them.

### **UNESCO Convention against Discrimination in Education (1960):**

The Right to education is no doubt declared as international right. The Convention against discrimination is the first international instrument declaring the right to education and highlighting its various dimensions. Article 1(a) defines discrimination as any act which deprives any individual or group to access to education at any level.

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<sup>2</sup> Article 2, United Nations Declaration of Human Rights, 1948.

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But it no where specifically mentions discrimination based on Disability of a person. However, Persons with disability are not specifically mentioned but the convention is based on the UNESCO constitutional mandate that there should be full and equal opportunities of education for everyone including the vulnerable group of individuals including the Persons with Disability. Article 4 of the convention puts an obligation on the State parties to make national policies and laws for the proper implementation of right to education by making it inclusive and removal of the discrimination if any for the benefit of vulnerable group i.e. PWDs. UNCADE has inspired several other instruments for example International Convention on Economic, Social and Cultural Rights, 1960. Article 13 of the convention recognized that everyone has right to education because only education can ensure the effective participation of all in the society and will promote understanding, tolerance and friendship. It also stresses on free and compulsory Primary education.

## **THE UNITED NATIONS CONVENTION ON THE RIGHTS OF CHILD (1989)**

The convention recognizes the Right to education of every child on the basis of equality of opportunity. Article 23 specifically mentions the right of children with disability. It stresses on the fact that young children suffering from disability should not be institutionalized on the basis of their disability and it should be ensured that they have equal right to education and community life which should be ensured by removing all the barriers in realizing their right to education. Children with disability should always be treated with dignity so as to encourage them to self reliance. Article 23 (3) specifies that State Parties shall encourage and ensure extended assistance that shall be designed to ensure that the disabled child has effective access to and receives education and training, amongst others. Several other international standard-setting instruments cover specific dimensions of the right to education. Article 28 of the convention guarantees free compulsory primary education to all children and access to higher education on the basis of one's capacity. It also puts obligation on the state to take appropriate steps to maintain attendance and discipline.

## **UNITED NATIONS CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES (2006):**

Since ages protection of rights of persons with disability has been on the agenda of the United Nations since its inception and this convention is the first legally binding treaty of 21<sup>st</sup> Century which protects the rights of persons with disability. This treaty is highly significant because on June 16, 2006 it was signed by 113 states and 147 nations ratified it. Article 24 the convention is devoted to protect the right to education of Persons with Disability. This articles states that to realize this right it necessary that there should be no discrimination and there should be equality of opportunity. This imposes obligation on state parties to ensure that there should be educational system which is inclusive at levels and ensures lifelong learning.

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In realizing this right, States Parties shall ensure that<sup>3</sup>:

- a) Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;
- b) Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;
- c) **Reasonable accommodation** of the individual's requirements is provided;
- d) Persons with disabilities receive the support required, within the general education system, to facilitate their effective education;
- e) Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.

Article 24(2) provides for reasonable accommodation as per the requirement of PWDs while this obligation has already been recognized under Article 5 (3) this way this convention stresses on the importance of inclusive education. Inclusive education refers to that system where state simply mixes the students belonging to different background to provide a general education so that difference in different education system so that so that people with disability can learn various skills required for their effective participation in the society. To provide inclusive education state requires hiring teachers by providing effective and adequate training so that they can teach students from different backgrounds. To attain this right people with disability also requires 'reasonable accommodation' along with other things which means that they can go to the schools which is near to the place they live. Reasonable accommodation means the schools must be accessible to the persons with disability for example classrooms must be accessible for that there should be ramps and lifts, there should be proper transportation facilities available and educational material must be according to their requirement for example it should be in Braille etc.

## II. RIGHT TO EDUCATION AVAILABLE TO PERSONS WITH DISABILITY UNDER INDIAN LAW

According to Census 2001, there were about 2.2 crore persons with disabilities in India, constituting 2.1% of the total population. The estimated population of persons with disabilities in 2008 is 2.44 crore. The mandate of the Constitution of India is to ensure equality, freedom, justice and dignity of all individuals, which implies an inclusive society for all, especially the disadvantaged. The right to education is guaranteed under the constitution of India (under Article 14, 15 19 and 21) which provide that all citizens have equality of status and opportunity before the law. These articles do not specifically mention the rights of persons with disability but

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<sup>3</sup> Article 24(2), United Nations Conventions on Right of Persons with Disability, 2006.

are general in nature. The Right to education is available to all including those suffering from Disability. Article 29 (2) of the Constitution provides that no citizen shall be denied admission on the ground of religion, race, caste or language in any educational Institute owned or receiving aid from the State. Article 41 of the Directive Principles of State Policy has a provision for right to education and public assistance in certain cases including the disables. Further, Article 45 of the Constitution provides that it is the duty of state to provide free and compulsory education to all children up to the age of 14 years which includes the children suffering from any disability. In 2002, after 86<sup>th</sup> amendment the right to education is declared as fundamental right of all children up to the age of 6-14 years. Various steps have been taken by government of India for the enforcement of right to education of children and those of children with disability. The Right to Children to Free and Compulsory Education Act, 2009 provides for free education to children from 6-14 years of age in neighbourhood school including the children with disability as mentioned under:

- **Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 :the meaning of disability is described in section 2 (i) stating that disability means:**
  - i. blindness;
  - ii. low vision;
  - iii. leprosy-cured;
  - iv. hearing impairment;
  - v. locomotor disability;
  - vi. mental retardation;
  - vii. mental illness

The Persons with Disabilities Act, 1995 (PWDA) addresses the issue of education for children with disability as an 'endeavour' to promote their integration within mainstream of schools. The focus is not on building the capacity of people living with disabilities, but rather on helping they cope within the existing mainstream. Following are the main provisions related to the educational rights of PWD under the Act:

Every Child with disability shall have the rights to free education till the age of 18 years in integrated schools or special schools<sup>4</sup>.

- a. Appropriate transportation, removal of architectural barriers and restructuring of modifications in the examination system shall be ensured for the benefit of children with disabilities.
- b. Children with disabilities shall have the right to free books, scholarships, uniform and other learning material.
- c. Special Schools for children with disabilities shall be equipped with vocational training facilities<sup>5</sup>.
- d. Non-formal education shall be promoted for children with disabilities.

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<sup>4</sup>. Bhattacharya, T. Re-examining Issues of Inclusion in Education, *Economic & Political Weekly* XLV(16), (2010).

<sup>5</sup>. Bindal, S. & Sharma, S. *Inclusive Education in Indian Context*, Journal of Indian Education. XXXV(4):34-44, (2010).

- e. Teachers' Training Institutions shall be established to develop requisite manpower<sup>6</sup>.
- f. Parents may move to an appropriate forum for the redressal of grievances regarding the placement of their children with disabilities.

- **The Rights of Persons with Disabilities Act, 2016–NEW ACT, 2016**

The Government of India has notified the Rights of Person with Disabilities Act, 2016 ("New Act") to give effect to the United Nations Convention on the Rights of Persons with Disabilities and for matters connected therewith or incidental thereto<sup>7</sup>. Previously the subject of disability was dealt under the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 ("Old Act"). The number of disabilities recognised under the law has been increased to 17 from 7 recognized under the Old Act, and have been elaborately defined<sup>8</sup>.

- Section 2(s) - "person with disability" means 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

**Sarva Sikhsha Abhiyan** under the Ministry of Human Resource Development is providing inclusive education to the children in special need by mainstreaming them in regular schools. The Ministry of Social Justice and Empowerment has the provision of providing funding to NGO's establishing school for children with special needs under **Deendayal Disability Rehabilitation Scheme** to promote Voluntary Action for Persons with Disabilities (Revised DDRS Scheme, 2009). A centrally sponsored scheme of "Inclusive Education for Disabled at Secondary Stage" (IEDSS) has been implemented since 1-4-2009 in place of CSS of Integrated Education for Disabled Children (IEDC). The objective of the IEDSS scheme is to enable the disabled children who have completed eight years of elementary education to continue their education at the secondary stage (class IX to XII) in an inclusive environment in regular schools. The primary objective is to prepare infants and children up to 6 years of age for schooling in special schools and/or integration at the appropriate stage in regular schools. The project also provides for therapeutic services, day care and counselling of parents.

**SIPDA**: Schemes arising out of the Implementation of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995: the Act of 1995 has provision (Sec 46 of PwD Act) for reasonable accommodation which is possible when there is free access to educational building by persons with disabilities for this SIPDA aims to provide barrier free environment in important government educational

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<sup>6</sup>.National Council for Teacher Education v. Shri Shyam Shiksha Prashikshan. Sansthan, (2011) 3 SCC 238.

<sup>7</sup>.Rudra Srivastava, *Rights of Person with Disabilities Act, 2016 in India*, Singhania & Partners LLP, Solicitors and Advocates, June15, 2017.

<sup>8</sup>.Priyanka Sharma, Benefits of Disability Act to Cover 14 New Categories, Including Acid Attack Victims, *India Today*, May 30, 2017.

buildings including State University and Medical college which would include provision of ramp, rails, lifts, special toilet for wheelchair users and tactile flooring etc.

**UNIQUE IDENTITY CARD FOR DIVYANGJAN (U.D.I.D):** another project launched by the government is to issue a Unique Disability Identity Card to PwDs to ease out the delivery of government benefits to PwDs. This will also help government tracking of physical and financial progress of beneficiary at all levels of hierarchy of implementation – from village level, block level, District level, State level and National level.

**Various efforts by Ministry of Empowerment of Persons with disability, Uttar Pradesh Government for the educational benefit of Persons with disabilities<sup>9</sup>:**

- **Operation of Bachpan Day Care for education of Pre-primary:** Bachpan Day Care centres are being operated in Lucknow, Allahabad, Varanasi (each with capacity of 60 children), Agra, Saharanpur, Jhansi, Bareilly, Gautam Budh Nagar (each for 30 children) from the funds received through "Education for All" campaign. Till year 2008-09 these centres were operated under "Education for All" campaign. After that from year 2009-10 onwards this scheme was decided to be operated by Empowerment of Persons with Disabilities Department through departmental budget. Bachpan Day Care Centre has an arrangement of Coordinator and Special teachers on honorarium and in addition to this services of 1 Physiotherapist, Psycho counsellor, Speech trainer/Specialist at each centres on the basis of per visit and services of attendant, nanny, cleaning staff and watchmen on the basis of honorarium is been taken for Bachpan Day Care. In these centres disabled children from age 03 to 07 years are given education/ training along with free coming and going facility and these children are also given training for obtaining education in general schools. Proceedings are being done for opening new Bachpan Day Care Centre in ten circle headquarters in districts viz. Aligarh, Chitrakoot, Moradabad, Mirzapur, Basti, Azamgarh, Kanpur City, Faizabad, Gonda and Gorakhpur.
- Operation of Prayas School (for locomotion related disabilities), Mamta School (for mentally retarded), Sanket School (for deaf and dumb students) and Sparsh School (for visually impaired students) according to the category of disability.
- Intermediate College (from Class-6th to Class-12th) is being established under Consolidated Education (for disabled children and normal children)
- Operation of Dr. Shakuntala Mishra National Rehabilitation University for Higher Education
- Visually impaired students after completing intermediate in their respective subjects have to face various difficulties while acquiring higher education, keeping this in mind for providing them residential facility while acquiring higher education one hostel each in Lucknow/ Gorakhpur and one hostel each in Allahabad/ Meerut for boys total six hostels has been established. In each hostel approved capacity of students is 200.

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<sup>9</sup> <http://uphwd.gov.in/page/en/state-scheme>

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- Total 07 classes are being operated for providing education to the students belonging to different categories of disabilities (Visual Impairment, Hearing Impairment and Bone Disability) along with normal students simultaneously under one roof through consolidated Special Secondary School from class 6th to 12th.
- Providing education according to Model School System along with latest technical system for providing barrier less environment to persons with disabilities in consolidated schools.
- Presently, consolidated schools are under-construction in following districts: Auraiya, Kannauj, Allahabad, Lucknow, Azamgarh, Ballia, Ghaziabad, Bulandshahr, Etah, Mirzapur, Maharajganj and Pratapgarh.
- To facilitate reading-writing of visually impaired students of the state, a Press is being operated for publishing the books in Braille. This Braille Press is established in students Hostel located at Nishatganj, Lucknow for visually impaired students studying in higher education. In this Braille Press, work of publishing books in Braille is carried out in different subjects to facilitate reading and writing of students studying in Blind Schools operated by the department.